Canada

The State of Competition in the Canadian Petroleum Industry

Volume VI

The Marketing of Gasoline

Director of Investigation and Research
Combines Investigation Act

The State of Competition in The Canadian Petroleum Industry

Statement of Evidence and Material Submitted to the
Restrictive Trade Practices Commission in Connection with an
Inquiry under Section 47 of the Combines Investigation Act

relating to

THE EXPLORATION FOR, AND THE IMPORTATION, PRODUCTION, PURCHASE, MANUFACTURE, STORAGE, TRANSPORTATION, DISTRIBUTION, BARTER, SUPPLY AND SALE OF CRUDE OIL, PETROLEUM, REFINED PETROLEUM PRODUCTS AND RELATED PRODUCTS

by

Robert J. Bertrand, Q.C.,
Director of Investigation and Research
Combines Investigation Act

Volume VI — The Marketing of Gasoline

This is one of a set of seven volumes comprising the Statement of Evidence and Material submitted to the Restrictive Trade Practices Commission in this matter by the Director of Investigation and Research under the Combines Investigation Act. The volumes comprising this Statement include:

Volume I	— Findings, Issues and Remedies
Volume II	— The Domestic Sector: An Overview of the Environment, Industry Behaviour and Performance
Volume III	— International Linkages: Canada and the World Petroleum Market
Volume IV	— The Production Sector
Volume V	— The Refining Sector
Volume VI	— The Marketing of Gasoline
Volume VII	— Index: Documents, Hearing Transcripts and other Sources Referenced in Volumes II through VI

Available in Canada through

Authorized Bookstore Agents
and other bookstores

or by mail from

Canadian Government Publishing Centre
Supply and Services Canada
Hull, Quebec, Canada K1A 0S9

Catalogue No. RG53-1981/56-6E	Canada: $10.00
ISBN 0-660-10850-X	Other Countries: $12.00
ISBN 0-660-10844-5 (set)	

Price subject to change without notice

Table of Contents

List of Tables & Figures

VOLUME VI

THE MARKETING OF GASOLINE

A. *Introduction*

The marketing volume focuses on the gasoline product sector. This is the one sector where there were virtually no product substitutes. British Petroleum notes that the only constraint on price in the gasoline sector, in contrast to other sectors, was the degree of internal competition within the industry:

> "... propulsion fuels are the only major part of the industry that have no effective competition as yet. The price is set only by internal competition within the industry. . . . the one product that is free from outside price competition is gasoline."
>
> (Document # 9634, July 30, 1970, B.P.)[1]

This then was the market where the monopolistic conditions so assiduously established via a harmonization of policies in the production and refining sectors could be expected to have a decisive influence.

This section is organized around three themes. First, it outlines the nature of competition among the major petroleum marketers. Secondly, it investigates the objectives and the extent of the various marketing practices that were adopted by the majors as a response to entry by more efficient 'independent' marketers. Finally, it describes the effect of this behaviour. For long periods of time, retail and wholesale margins were kept at levels which the industry recognized as being 'excessive'.

Although this study treats marketing as a separate sector, neither its performance nor the behaviour of the major firms therein can be properly analyzed without an appreciation of the relationships between the majors at other stages of this vertically integrated industry. The types of marketing policies that were adopted by the majors and that served to reduce competition and to increase prices depended for their success upon the extensive arrangements that were entered into by these firms in the refining and production sectors. At these two levels of the industry, the interests of the major firms were linked via explicit agreements. In production, under the leadership of Imperial, the majors fixed crude prices and agreed to an allocation system of crude types that would have permitted the disciplining of any refiner-marketer who might otherwise have competed more aggressively in gasoline marketing. In the refining sector, exchanges, purchase/sale, and processing agreements increased the degree of mutual interdependence among the majors. Moreover, in many cases these agreements were meant to 'control' new entrants to the refining

sector who might otherwise have disrupted the non-competitive equilibrium that had been established in marketing. Because of the links that drew these companies together in the refining and production sectors, these firms developed a common set of policies and interests in the marketing sector and acted as a unit to restrict competition. The mutual interdependence that resulted from their close ties in the other sectors enabled them to follow similar policies with regard to the type of competition they employed against outsiders and among themselves. The result was that they were able to control and restrict price competition and maintain 'excessive' wholesale and retail margins.

When faced with little competition from third parties, the majors followed parallel policies of high wholesale and retail margins and generally avoided price competition. Rivalry between these large vertically integrated firms took the form of non-price competition. To sell gasoline the large vertically integrated majors depended upon heavy promotional activity in order to develop brand identification and the construction of extensive dealer networks that were characterized by relatively low volumes per outlet. Marketing costs, as a result, were so great that even though the wholesale/retail margins were inordinately high, the profitability of the branded dealer networks of the majors was not excessive. Nevertheless, the retail prices charged by the majors were extremely high as the majors themselves realized. Independent marketers with lower marketing costs threatened to disrupt the majors' pricing structure. Taking advantage of the comparatively high margins being charged by the majors, the independents attempted to enter the market by offering discounts at anywhere from 5 to 15 cents per gallon below the majors' branded prices.

The majors' response to entry from the independents was designed to thwart competition. Faced with entry by independents whose lower cost structure permitted them to price below the traditional branded price level, the majors together adopted several restrictive trade practices in order to discipline the independent sector. Their short run goal was to force prices upwards and to bring them into conformity with the majors' retail pricing structure. In order to do so, predation was practised on a wide scale.

The instruments that were used to accomplish this took a number of forms. Subsidies were granted to dealers via the use of a temporary allowance or consignment scheme. With a temporary allowance scheme, the dealer determined the final pump price even though the subsidy granted him — via a reduction of his normal wholesale price — often was a function of the pump price chosen. With consignment schemes, the dealer became an agent of the oil company, being paid a commission for every gallon sold, and the final pricing decisions lay with the company. Both of these tools were used to develop a systematic structure of price discrimination. They were used by the majors to permit their high cost branded networks to compete on a selective basis in markets where, because of the independents, price competition existed. At the same time, this policy served to maintain full posted prices elsewhere.

Since selectivity of approach was often the key to the successful implementation of this policy, consignment, rather than temporary allowances, was chosen when the need for disciplining the independents became particularly great. Temporary allowances suffered from two disadvantages. First, since the dealer still set the price, the oil companies could not always guarantee that the most effective disciplinary pricing strategy was adopted by the dealer. Secondly, the policy was relatively costly. In order not to violate price discrimination provisions of the Combines Investigation Act, allowances tended to be granted to retailers over a fairly wide geographic area, (commonly referred to as a trade area). Consignment, on the other hand, permitted the company to set the price directly. In addition, since there was no sale of product under consignment, it permitted the majors to localize the cost of disciplining the competition because it did not have to be extended over a wide geographic area.

The industry also employed 'fighting' brands to discipline the independent marketers. Some of the major companies, evolved their own low price second brand networks that were envisaged as temporary tools meant to draw business away from the independents. These second brand networks were not meant to be permanent fixtures offering lower priced gasoline to consumers. Once independents were disciplined by a loss of market share, it was the intention of those companies which actively employed second brands to effect a restoration of unbranded prices. Evidence on the profitability objective adopted for these second brand networks or their actual performance confirms their predatory intent.

Second brands were a refinement of the temporary allowance and consignment policies. They permitted a greater selectivity of response; therefore, they were a more efficient predatory tool. They permitted a finer degree of price discrimination than subsidies to the branded network — the latter being subject to the constraints imposed upon the petroleum industry by the price discrimination laws in the Combines Investigation Act or the increasing scrutiny that consignment policies were receiving from the Restrictive Trade Practices Commission (see *North Star and Shell Gasoline Consignment Plans*, 1966). Second brand networks received their greatest prominence when competition from the independents became particularly severe in the late nineteen sixties and early nineteen seventies. By this time, the disciplinary instruments of temporary allowances and consignment, which had worked so successfully on previous occasions, were no longer effective by themselves and were supplanted or supported by the use of second brands.

Although there have been previous attempts to examine the marketing practices of the petroleum companies, they have not generally focused on the issues raised here. This inquiry has concentrated on the underlying reasons for these subsidy schemes and their effects upon competition. It has been argued that these subsidy schemes permitted the oil companies to support their retailers

in the face of short-term 'distress' situations that were caused by a temporary oversupply of product or by aberrant behaviour by dealers who cut prices to 'unreasonable' levels. Quite to the contrary, the evidence that is developed herein shows that these practices were used against a segment of marketers whose advantage lay neither in their being supplied with 'distress' product nor in their adopting 'irrational' pricing policies. As the majors themselves realized, independents enjoyed both lower wholesale and retail costs. As a result, independents could charge lower prices at the pump. Temporary allowance, consignment, and fighting brand programmes were designed and used by the majors as predatory tools to counter the inroads being made by these marketers.

It might be argued that the only intended goal of the majors was to offer to the public the same quality of product that the independents were providing — gasoline at lower prices. This was not the case. The majors intended these policies to be temporary. They implemented these practices with the intent of withdrawing them as soon as prices could be restored in the price sensitive areas. Moreover, these very policies were seen by them to be the means by which prices could be moved upwards. The intent to discipline the independents and to force their prices upwards is documented in the following chapters. The major marketers used these practices to restrict the spread of price competition. By meeting independents' prices when they entered the market, the more aggressive majors attempted to reduce the incentive for entry elsewhere. To the extent that prospective entrants could be taught to expect that they would be met with disciplinary pricing practices, then potential marketers would be less likely to enter the gasoline market. To the extent that existing independents had sufficient business drawn away from them, that their profitability was reduced below acceptable levels, then they would not be as likely to expand. In this fashion, the disciplinary pricing practices of the majors were aimed at enhancing the height of entry barriers in the marketing sector.

It is important to recognize that the majors showed little inclination to adopt the more efficient style of distribution that the independents pioneered. The majors' ultimate objective was to protect their high cost, high priced branded distribution network. Therefore, the restrictive marketing practices that were employed were aimed at keeping prices at high levels in those areas where the independents did not enter. Price competition would have spread more quickly to these areas had the majors not evolved various forms of systematic geographical price discrimination schemes that were aimed at restricting the spread of independents.

Each of the marketing practices — temporary allowances, consignment, and second brands — involved a temporary reduction of prices to meet competition and the stated intention to return prices to their original levels when the entrants had been sufficiently disciplined. If predation is defined as the use of price as a disciplinary weapon with the ultimate objective of enhancing the

average price level, the marketing practices adopted by the majors can be classified as predatory. The concept of predation has also been associated with the notion of pricing below cost; however, by definition, a successful policy of predation will not be associated with long run losses. The policy either may have to be invoked infrequently or it may lead to an enhancement of prices sufficient to offset short term losses. Even so, evidence indicates that some firms consciously chose to incur losses to counter the growth of the independents. Therefore, on either definition, the practices that were used to discipline the independents meet the criteria needed to establish predation.

With the predatory objective of the marketing policies established, the issue then becomes one of effect. Effect can be evaluated by examining the pervasiveness of the policies — whether they constituted a 'practice'. If they did not, they were not likely to have had much impact. The succeeding sections demonstrate that these policies have been followed since at least the nineteen fifties whenever the industry was faced with entry. It is also clear that they were universally pursued by the majors. The succeeding chapters indicate that the restrictive marketing practices were adopted by all of the majors in one degree or another. The policies of all the majors taken together would have had a mutually reinforcing effect.

Information as to the pervasiveness of the restrictive practices both as to the number of majors employing them and the time period during which they were employed indicates that they were practised on an extensive scale, and thus, would have had an effect on the market. In addition, documents on the objectives of the majors in employing these practices confirm that their intent was to reduce competition and to enhance prices. Finally, the performance of the gasoline market also confirms the effectiveness of these disciplinary programmes. Throughout most of the post-war period, gasoline margins were kept at levels that the majors recognized were not sustainable in the face of unhindered competition. In addition, evidence confirms that the majors appreciated the efficacy of their policies in reducing or eliminating competition from independents when it broke out.

The marketing section, therefore, provides a comprehensive analysis of the practices that have been employed by the major firms in the industry to restrict competition and the effect of these practices. The adoption and perpetuation of a marketing system with high retail and wholesale margins attests to the strength of the monopolistic situation that had developed in the industry. As a result of a set of arrangements made at the production and the refining levels of the industry and because of the extent of vertical integration, the degree of interdependence reached the stage where price competition among the majors at the marketing level was virtualy non-existent. Refinery exchanges that tied the amount a company could lift from another to the amount the other took from it provided an efficient instrument that could be used to discipline

aggressive behaviour, as the refining section has already discussed. In production, the device that was used for fixing the price of crude, the distortions that were incorporated into the pricing structure, and the allocation mechanism that was used to direct the 'preferred' crudes to certain companies meant the industry leader — Imperial — could discipline an aggressive refiner by increasing its crude costs. Thus mutual forbearance with regards to price competition between the majors in gasoline marketing resulted from the effectiveness of the arrangements that permeated other levels of the industry.

While mutual forbearance may explain the development of the majors' high cost marketing system, it does not account for its survival. For the high cost marketing system attracted entrants. In response the majors acted as a group to forstall entry or to discipline entrants so as to entrench their monopolistic position. This was done by employing predatory practices against certain marketers whose low cost distribution system threatened the majors' branded pricing structure.

That the predatory tools employed against the independents were so successful in constraining competition must be attributed to the way in which the programmes of each major were mutually reinforcing. Each company perceived the same threat from the independent gasoline marketer. Each of the companies carefully studied the actions of the others, evaluated these policies as predatory in intent or effect and then adopted the variant that was best suited to its own situation but which contributed to the common goal of restraining the independents. Because of this, analogous or similar disciplinary policies were adopted by each major that together served to restrain price competition from the independent marketing sector. The majors' disciplinary policies were, therefore, the result of a conscious attempt to coordinate their behaviour against price competitive outsiders. In this sense, the majors arranged to act as a unit employing predatory practices to entrench the monopolistic position that they owed to their control upstream in refining and at the crude acquisition stage.

The marketing section commences with a general discussion of the performance of this sector prior to the major events of 1973 that produced the dramatic rise in world prices. It establishes the lack of competition among the majors, their relative inefficiency, and the dynamic role played by the independent marketers. In the next section, the issues surrounding predation are outlined. Then detailed histories of the marketing practices employed by each of the majors are presented. Finally, the concluding section summarizes the findings of the study.

B. *Market Structure*

The following section describes the number and the market share of the major participants in the gasoline retailing market. It also provides a brief

description of the market structure of the industry. It should be emphasized that the concentration statistics in marketing alone do not indicate the market control these firms posessed, because they do not reflect the integrated firms' arrangements in the refining and crude oil sectors.

The data on market structure shows that in some regions the market for gasoline was highly concentrated. Equally important, the performance data that will be developed at length in later sections shows that in those regions where performance was consistently poor, concentration was high. On the other hand, lower concentration in such areas as Quebec and Ontario was accompanied by anti-competitive practices that had deleterious consequences for performance. This in conjunction with the behaviour and performance data for these regions, shows that even with a relatively unconcentrated marketing sector, predatory policies together with control in refining and crude oil acquisition served to distort the efficient allocation of resources in the marketing sector.

The analysis of the gasoline marketing sector recognizes that the Canadian market consisted of a number of regions and that the structure of the market in each of these regions was not the same. In addition, the list of participants differed across regions. Tables l, 2, 3, 5, 6 and 7 present the market shares for major industry participants for the Atlantic, Quebec, Ontario, Alberta, Prairie, and Pacific regions for selected years between 1954 and 1971. There are four major companies that had nation-wide representation — Imperial, Shell, Texaco and Gulf. There were also regional companies with a relatively large share of their respective market — such as Standard Oil of British Columbia (SOBC) with about 20 per cent of the Pacific market, or Irving with about 25 per cent of the Atlantic market. At the next level were a number of intermediate sized companies most of which were vertically integrated but which had only regional representation. This group included such firms as British Petroleum, Petrofina, and Sun Oil in Quebec and Ontario; Pacific Petroleums, Husky and the Co-op on the Prairies or in Pacific markets.

In examining the structure of each region the period under study was broken down into a number of sub-periods. The first is the sub-period of the nineteen fifties. This time span was marked by little 'independent' activity, increasing retail/wholesale margins, and by entry from a few of the smaller integrated international petroleum companies in Quebec, Ontario and the Atlantic Provinces. The second is the sub-period from 1959 to 1964. During this time, independents entered, price competition emerged briefly but was quickly suppressed by the disciplinary reaction of the majors and the acquisition of several large independent firms by majors like Shell and Gulf. The third sub-period lasts from 1964 through 1970 when retail/wholesale margins returned to high levels and independents began to expand once again.

1. *The Atlantic Market*

As Table 1 indicates, the Atlantic region has been marked over the whole period by little change in the total market share accounted for by the major participants. In 1954, Imperial, Canadian Oil, Texaco and Gulf accounted for 63 per cent of the market; in 1971, the same four firms had 65 per cent of the market — with Shell having acquired Canadian Oil. If the market share of the large regional company — Irving — with strong links to the group of international majors through partial ownership by Standard Oil of British Columbia, a subsidiary of Standard Oil of California — is added, these five companies accounted for 88 per cent of the market in both 1954 and 1971. Table 1 shows little change in market shares over the intervening years.

It should be noted that in this region virtually no entry occurred. In the earlier period Fina acquired Superline, but then ceded market share. In 1971, Fina had a slightly higher market share than Golden Eagle — which entered in the late nineteen sixties.

TABLE 1

MARKET SHARES IN THE ATLANTIC
GASOLINE MARKET, SELECTED YEARS
1954-71
(%)

Company	*1954*[2]	*1961*[2]	*1967*[2]	*1971*[2]
Imperial	34	31.5	29.7	28.2
Shell[1]	8	10.8	11.2	11.2
Texaco[1]	11	9.2	13.7	15.1
Gulf (B.A.)	10	10.0	11.6	10.6
Fina[1]	12	11.4	8.3	6.7
Irving	25	26.8	23.4	24.3
Golden Eagle	—	—	1.8	3.2
Other	—	.3	.3	.7

Notes: 1. The entries under Shell for 1954 and 1961 represent the market share of Canadian Oil, which was acquired by Shell as of 1963. The entry under Texaco for 1954 is that of McColl-Frontenac, the predecessor of the Texaco organization. The entry under Fina for 1954 represents the market share for Superline which Fina acquired on December 31, 1955.

2. The 1967 and 1971 figures are for the retail market; the 1961 figures are for the total motor gasoline market which includes, in addition to retail, the commercial and farm markets; the 1954 figure is for retail plus consumer markets.

3. Texaco does not include figures for Newfoundland in their Maritime Survey — 1961.

Sources: 1954: Document # 120371, Imperial[2]
1961: Document # 52384, Texaco[3]
1967, 1971: Document # 119466, Imperial[4]

Until 1971, unbranded activity was virtually non-existent. Among the majors, Imperial Oil appeared to act as the predominant firm giving up a small amount of market share to Shell and Texaco.

2. *The Quebec Market*

The Quebec market, like the Atlantic market, has been served by offshore crude and imports of refined product throughout the two decades under study. However, in contrast to the Atlantic market, entry by new firms was greater and the dominance of the four national majors declined over time. Table 2 shows that in 1953, Imperial, Shell, Texaco, and Gulf accounted for 72 per cent of the market. By 1971, this figure had declined to 59 percent[1]—some six percentage points below the Atlantic figure.

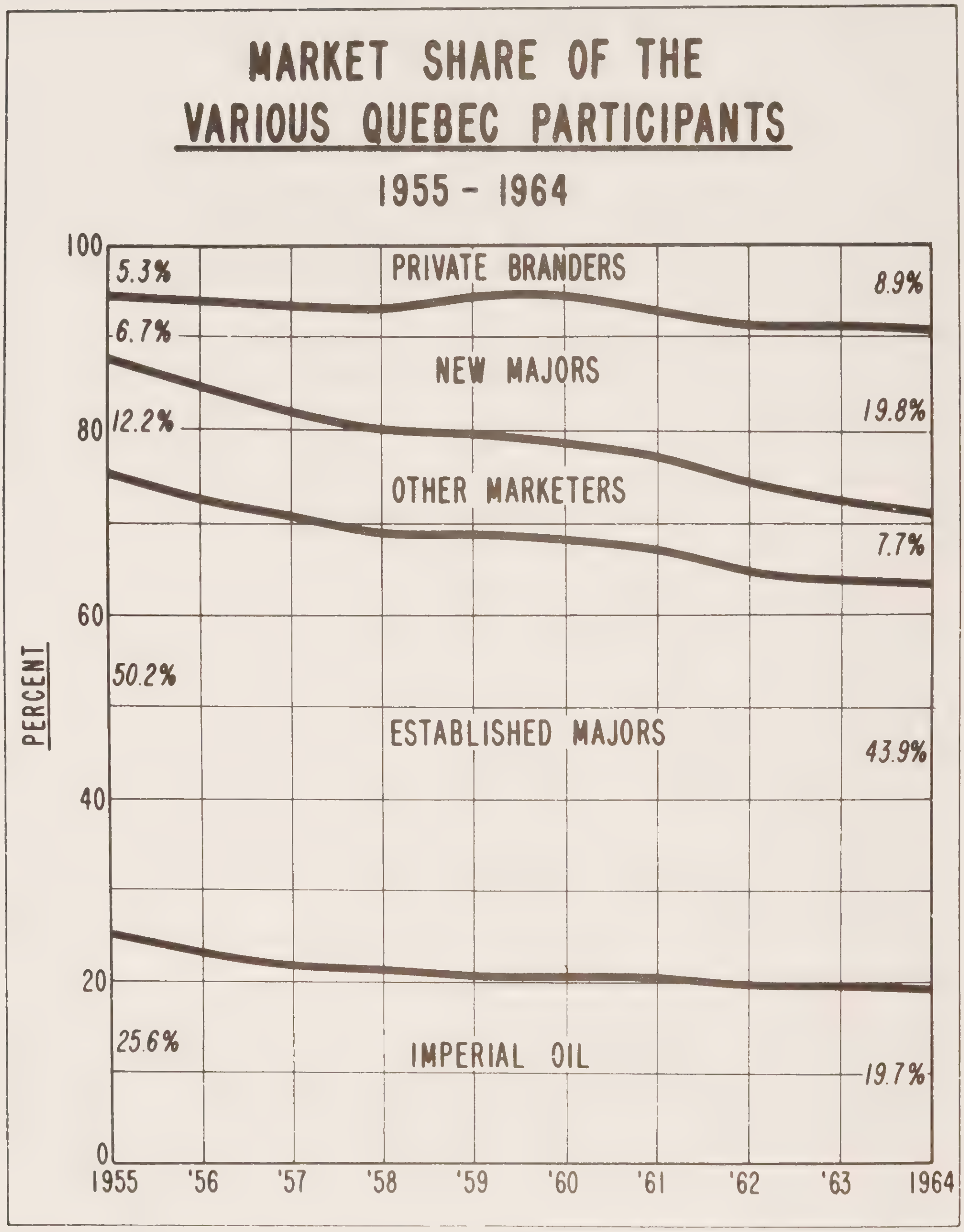
Another difference between Quebec and the Maritimes can be found in the composition of the secondary group of firms — those who were not national brand majors. In the Maritimes this segment was dominated by one firm — Irving. In Quebec, there were a number of firms in this group. These firms can be classified into two distinct groups — large international integrated firms on one hand and smaller marketers on the other.

In Quebec, the period from 1953 to 1964 was characterized by the entry of large multinational firms such as Fina and British Petroleum. As Figure 1 demonstrates, the primary change in market structure did not come from independent or unbranded retailers but from this new group of majors. These two companies increased their share of the market from almost zero to approximately 17 per cent. However, the new majors followed essentially the same strategy as the previous majors in adopting a high cost distribution system—"through a heavy building and acquisition program" (Document # 123856).[5] Thus, the impact of entry from these firms on the performance of the industry was relatively minor. While four national brand majors accounted for 72 per cent of the market in 1953, by 1964, these four and the two entrants still accounted for 73 per cent (if Champlain and Supertest are included, the relevant figures are 84 per cent and 80 per cent).

Between 1964 and 1971, the share of the national majors relative to the regional brands actually increased. This is illustrated in Figure 2. In this chart, the 'independent' sector is omitted and a comparison of the relative size of the national brands to the regional brands shows the decline of the latter. When the independents are added to the market — as in Figure 3—it is evident

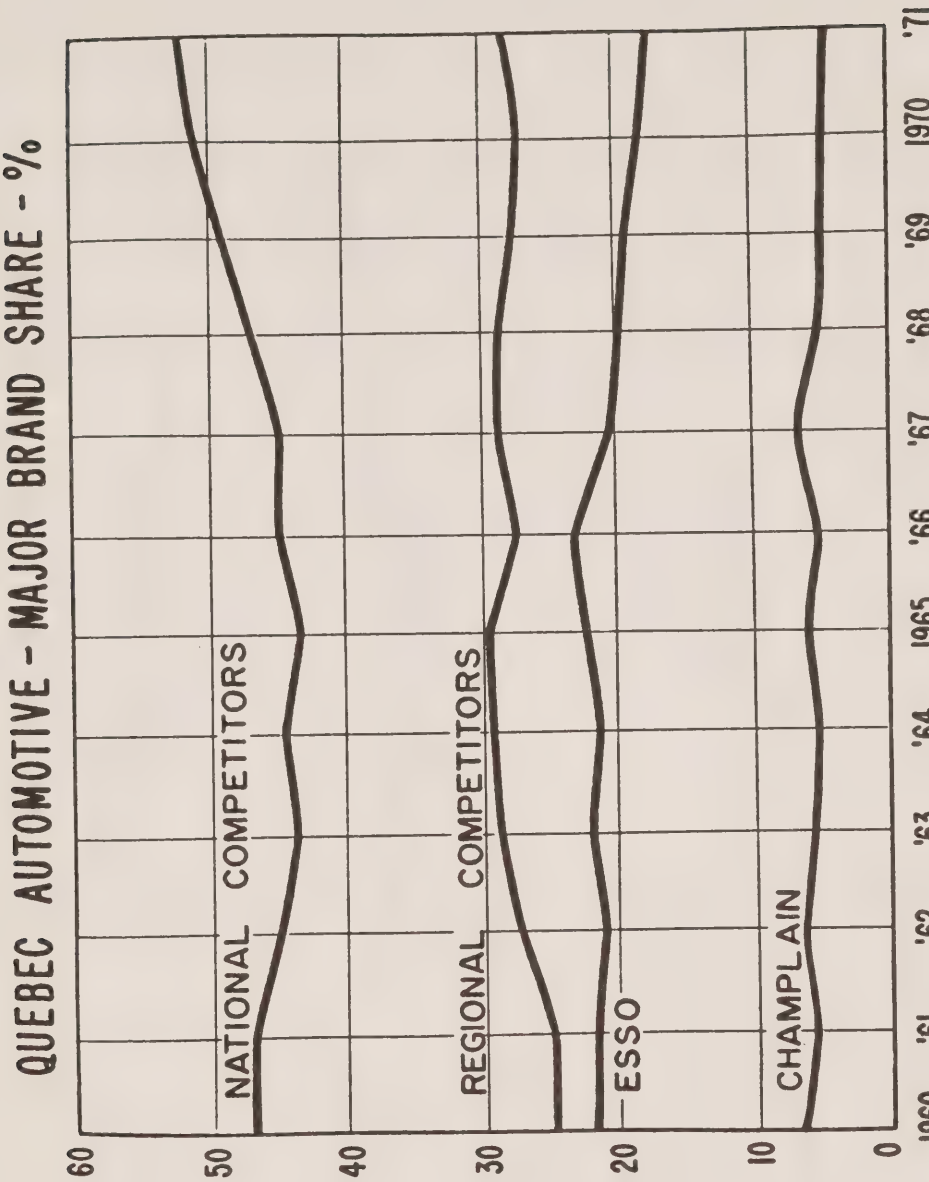
1. Champlain became a wholly-owned Imperial subsidiary in 1937 and Supertest relied on Imperial for product and was 'controlled' by it. If the share of these two companies is included under that of Imperial, then the majors' share declined from 84 per cent in 1953 to 64 per cent in 1971.

FIGURE 1



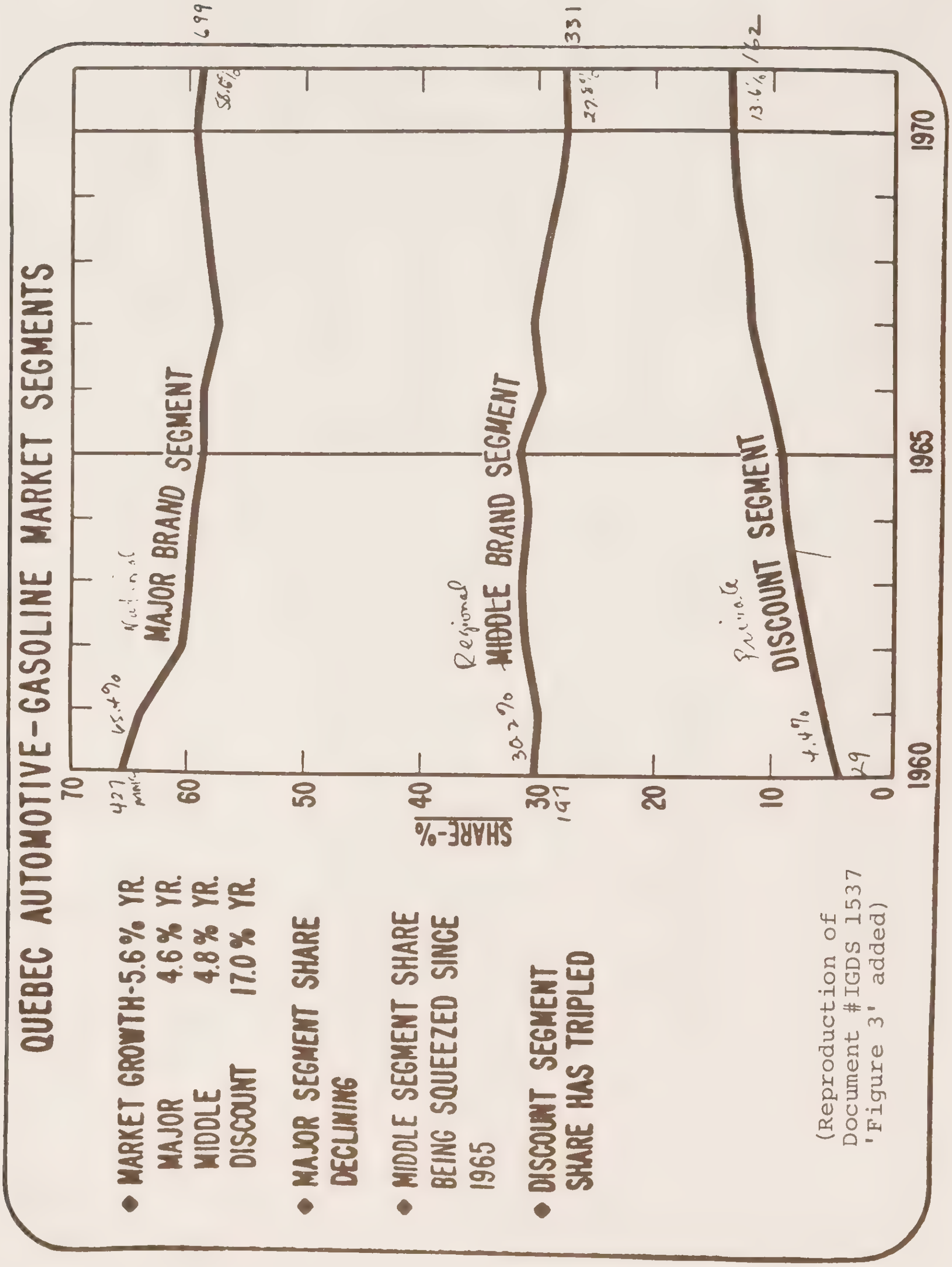
(Reproduction of Document #123851
'Figure 1' added)

FIGURE 2



(Reproduction of Document #IGDS 1222
'Figure 2' added)

FIGURE 3



(Reproduction of Document #IGDS 1537 'Figure 3' added)

that the major brands maintained a relatively constant share during the latter part of the nineteen sixties while the independents grew at the expense of the regional brands. The private brand discount sector grew from about 8 per cent in 1964-65 to about 14 per cent in 1970. Reference to Table 2 shows three

TABLE 2

MARKET SHARES IN THE QUEBEC GASOLINE MARKET, SELECTED YEARS 1953-71 (%)

Company	*1953*[1]	*1955*[2]	*1961*[3]	*1964*[2]	*1969*[2,4]	*1971*[2,4]
Imperial Oil	26.2	25.6	21.8	19.7	16.7	14.5
Shell	15.2	14.5	12.6	11.6	17.2	18.6
Texaco (McColl-Frontenac)	16.1	13.7	14.6	13.1	14.3	15.0
Gulf (BA)	14.3	13.4	14.2	11.2	10.6	10.7
Subtotal	71.8	67.2	63.2	55.6	58.8	58.8
Champlain	6.7	7.1	4.2	4.9	4.0	3.7
Supertest	5.4	5.1	2.2	2.8	1.6*	1.1*
Subtotal	12.1	12.2	6.4	7.7	5.6	4.8
British Petroleum	—	—	6.8	8.7	7.5	7.6
Petrofina	0.1	4.8	10.1	8.2	7.8	8.0
Sunoco	1.8	1.8	2.7	3.4	2.7*	2.4*
Irving	1.1	1.9	3.5	2.9	3.8*	3.6*
Canadian Oil[5]	7.4	6.8	4.6	4.6	—	—
Cities Service	0.9	0.8	—	—	—	—
Golden Eagle	—	—	—	1.1+	3.4*	3.8*
Murphy	—	—	—	1.9+	2.8*	5.2*
Cal Oil	—	—	—	.7+	2.1*	2.5*
Subtotal	11.3	16.1	27.7	30.5	30.1	33.1
Others	4.8	4.5	2.7	6.2	5.5	3.3

Notes: 1. the 1953 figure is for retail plus consumer sales

2. the 1955, 1964, 1969 and 1971 figures except for those marked by an asterisk are for retail sales

3. the 1961 figures are for retail, consumer and farm market sales

4. the market referred to by those figures marked by an asterisk are not defined in the Texaco document

5. Canadian Oil was acquired by Shell as of 1963

Sources: 1953: Document # 120371, Imperial[6]
1955, 1964: Documents # 123849, 123853, Imperial[7,8]
1961: Document # 7545, Texaco[9]
1969, 1971: Document # 119466, Imperial[10]
1969, 1971: Asterisks, Documents # 7400, 8933, Texaco[11,12]
1964: + sign, Documents # 123861, 123922, Imperial[13,14]

companies in this segment — Golden Eagle, Murphy and Cal Oil (Calex)— increased their share from 3 per cent to 12 per cent while the 'other' category declined from 6 per cent to 3 per cent leaving a net gain of about 6 per cent. In summary, the regional brands such as Champlain, Supertest, British Petroleum, Petrofina and Sunoco lost market share to new entrants such as Golden Eagle, Murphy and Cal Oil. Nevertheless by 1971, the national majors along with two regional majors (Petrofina and British Petroleum) still accounted for 79 per cent of the retail market.

As in the Maritimes, Imperial was the major which consistently gave up market share throughout the period. In 1955, Imperial had a market share almost double each of the other three major brands; by 1971 it no longer enjoyed such dominance. Therefore, in both eastern markets served by offshore crude, Imperial acted in a fashion consistent with a dominant firm oligopoly model. The dominant firm, was willing to permit entry in return for industry stability and enhanced prices.

3. *The Ontario Market*

Of the five regions being examined, Ontario had the least concentrated market structure. Table 3 shows that in 1954, the four national brands accounted for 62 per cent of the market. Four regional brand marketers — Supertest, Reliance, Canadian Oil and Sunoco accounted for another 27 per cent. Therefore, some eight firms were responsible for 89 per cent of the market. Six years later in 1960, the eight largest firms accounted for 88 per cent of the market. Only the identity of these eight had changed and this change was relatively minor. Reliance and Supertest had merged and British Petroleum had entered the ranks of the top eight. The relative growth of company-owned service stations for the majors during the nineteen fifties is presented in Table 4.

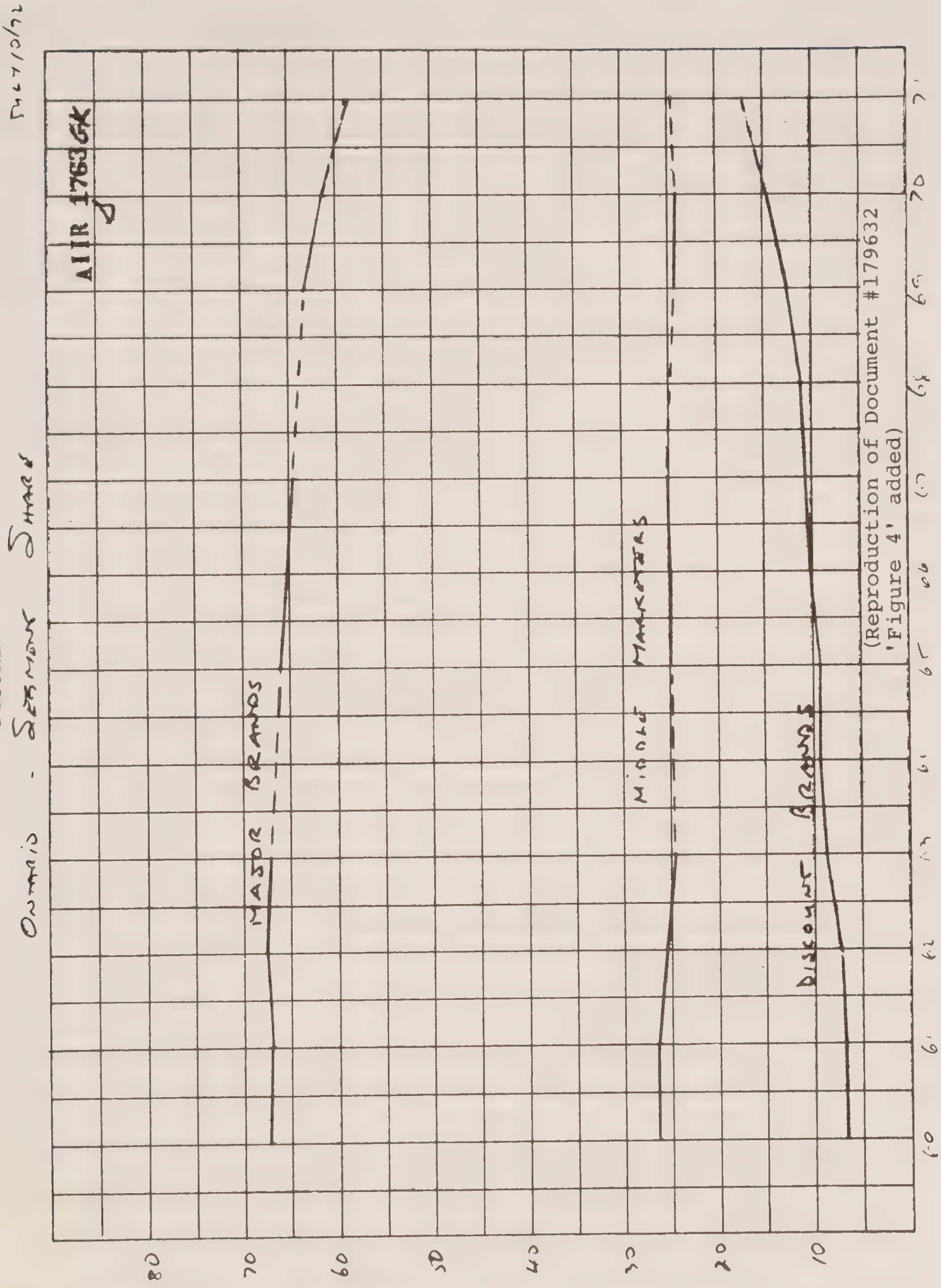
By 1967, the top four majors accounted for 63 per cent and the top eight for 87 per cent. The identity of the top eight changed only slightly. By 1967 Canadian Oil had been purchased by Shell Oil, and Petrofina had grown to fill the position previously occupied by Canadian Oil in the top eight firms.

Between 1967 and 1969, the top four majors' share declined slightly to 61 per cent, while the regional majors' share remained at 24 per cent leaving the eight-firm ratio at 85 per cent. This trend continued into the early nineteen seventies. From 1969 to 1971, the four nationals' share continued to decline to 58 per cent while the four intermediates' share increased to 27 per cent, leaving the eight-firm ratio at 85 per cent.

In summary, the top eight firms' market share which was 89 per cent in 1954, had decreased to 85 percent some seventeen years later although the identity of some of the participants had changed.

A summary of changes in Ontario's market structure is provided by Figure 4. This chart plots the relative shares of what Imperial defined as the

FIGURE 4



(Reproduction of Document #179632
'Figure 4' added)

major brands, the middle marketers — the intermediate or regional brands — and the discount brands. This graph is slightly misleading in that, having been prepared in the early nineteen seventies, it apparently includes Canadian Oil in Shell's total for the entire nineteen sixties.[1] Nevertheless, it shows that during the nineteen sixties the discount brands increased from 7 per cent in 1960 to about 17 per cent in 1971. This is almost the same as the increase shown for the 'other' category in Table 3.

TABLE 3

GASOLINE MARKET SHARES ONTARIO,
SELECTED YEARS 1954-71
(%)

Company	*1954*	*1960*	*1967*	*1969*	*1971*
Imperial	23.4	20.9	19.9	19.1	16.2
Shell	11.9	19.0[4]	19.4	18.9	19.0
Texaco	12.4	14.5	11.4	11.1	11.4
Gulf	14.6	12.6	12.6	12.2	11.8
British Petroleum	—	5.2	7.0	6.8	8.0
Sunoco	5.8	6.8	7.1	6.9	7.5
Petrofina	0.5	4.1	3.1	3.2	3.0
Supertest	13.2[1]	9.1	7.2	6.8	8.5
Canadian Oil[4]	8.4	in Shell Oil	—	—	—
Cities Service[2]	3.2	—	—	—	—
Trinidad[3]	3.4	—	—	—	—
Champlain	0.3	n.a.	0.2	0.2	0.1
Husky	—	—	0.3	0.4	0.3
Golden Eagle	—	—	0.2	0.2	0.2
Other	2.9	7.0	11.6	13.9	14.0

Notes: 1. 1954 includes Reliance—as in Document # 180664, Imperial[15]

2. Cities Service acquired by BP

3. Trinidad absorbed in Texaco

4. Canadian Oil purchased by Shell as of 1963 — 1960 figure not available separately but included in 1960 figure for Shell

5. n.a. — not available

Sources: 1954: Document # 120371, Imperial[16]—retail and consumer markets
1960: Document # 180635, Imperial[17] gives per cent by majors with no discounters—each per cent reduced to allow for 7 per cent accounted for by private branders—Document # 179632, Imperial[18]—retail market sales
1967, 1969, 1971: Document # 119467, Imperial[19]—retail market sales

1. Figure 5, a companion to Figure 4 shows no increase for Shell Oil in 1963 - the year it acquired Canadian Oil Co.

TABLE 4

NEW COMPANY-OWNED SERVICE STATIONS OPENED IN ONTARIO
1950-59

Company	*1950*	*'51*	*'52*	*'53*	*'54*	*'55*	*'56*	*'57*	*'58*	*'59*	*Total*
Imperial	12	12	19	11	34	19	16	57	40	32	252
B.A. (Gulf)	3	8	12	10	12	28	30	51	40	17	211
B.P.	—	—	—	—	—	—	—	—	9	29	38
Canadian Oil	2	6	8	8	21	24	22	26	28	11	156
Petrofina	—	—	—	—	25	101	124	70	16	7	343
Shell	15	9	10	18	19	20	21	59	46	14	231
Sun	11	15	25	29	37	33	28	27	26	9	240
*Supertest	—	10	4	14	14	11	14	15	11	7	100
**Texaco	11	9	14	18	33	40	52	28	18	28	251
Miscellaneous	2	7	4	4	15	23	23	32	30	13	153
Totals	56	76	96	112	210	299	330	365	264	167	1975

Notes: *Includes Reliance
**Includes McColl-Frontenac, Regent, Trinidad

Source: Document # 180664, Imperial[20]

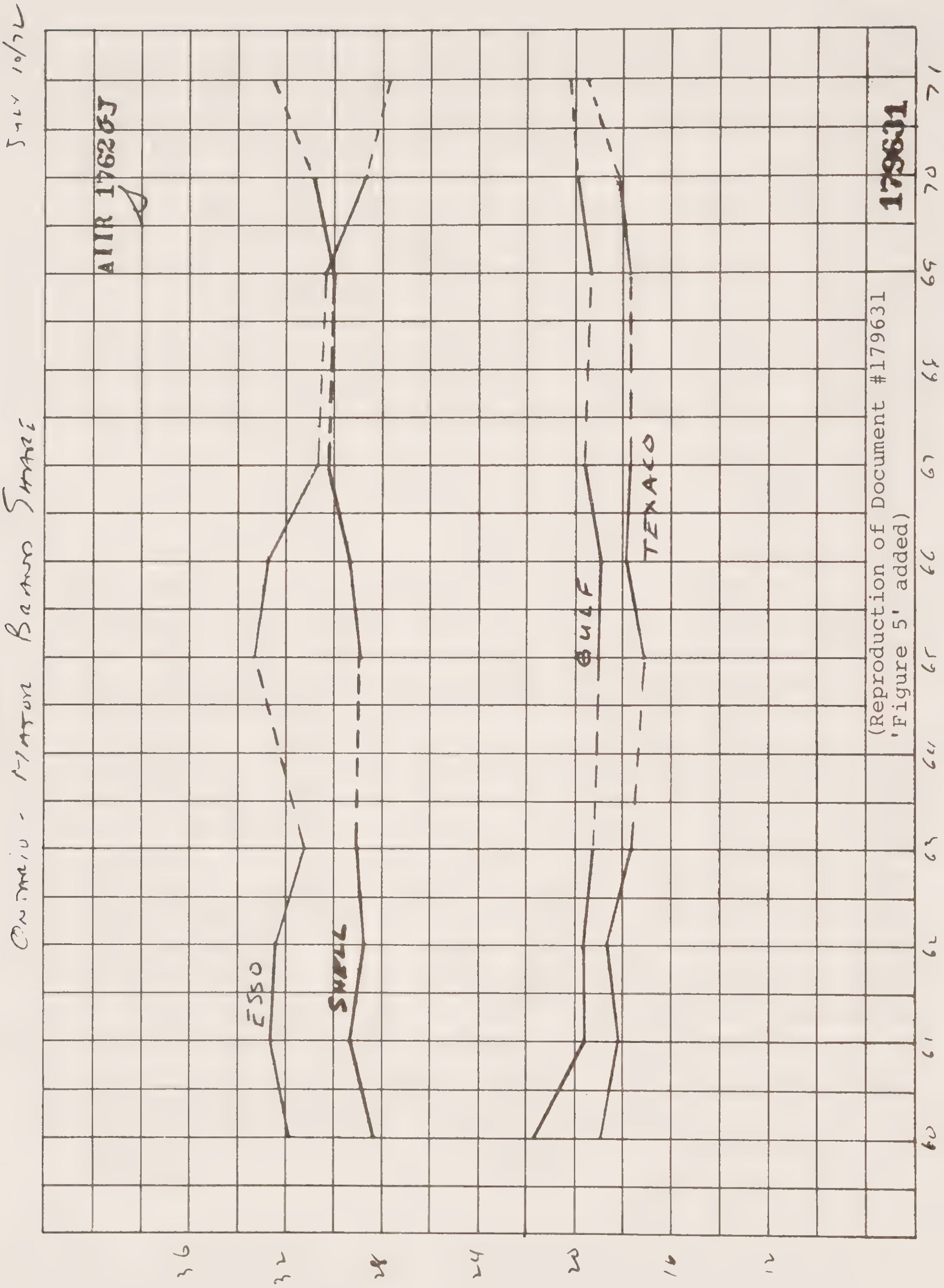
The market structure, therefore, provides conflicting signals as to performance. On the one hand, there is the relative stability in the share of the largest eight firms. On the other, there is an increase in the 'other' category — a category increasingly dominated by price-aggressive independents.

As in Quebec and the Maritimes, Imperial was the national brand which gave up the largest market share during this period. Even though Ontario was supplied to a greater extent by domestic crude than Quebec, Imperial apparently adopted a similar role in both regions. In addition, it should be noted that Gulf saw its relative importance reduced slightly. Evidence from the production sector indicated that Gulf had cooperated with Imperial in the late nineteen fifties to move the dividing line between foreign and domestic crude eastwards in Ontario. It also shared 'control' over crude purchasing and decision making at the pipeline level with Imperial, and appears to have been the conduit between other firms in the industry and Imperial when crude prices were discussed. It is therefore significant that Gulf's trend in market share in Ontario followed that of Imperial, for this suggests that these two firms together provided the umbrella under which the industry operated in this region.

4. *The Prairie Market*

The Prairie market differed radically from that of Ontario and Quebec in that competition from independents was less important throughout the period. In addition, the market share of Imperial, Gulf, Shell, and Texaco

FIGURE 5


ESSO
SHELL
GULF
TEXACO
179631
(Reproduction of Document #179631
'Figure 5' added)

increased substantially from the late nineteen fifties to the mid- nineteen sixties. As Table 5 demonstrates these four majors sold 74 per cent of all gasoline distributed in Alberta through retail outlets in 1957, but 86 per cent in 1965. This was the result of the acquisition by both Shell and Gulf of a number of intermediate-sized independents — North Star, Canadian Oil, Royalite, Anglo-American and Great West. Once again, Imperial gave up market share.

Changes in market share for the total Prairie market from 1967 to 1971 are presented in Table 6. During this period, the market share of the four national brands declined from 86 per cent in 1967 to 83 per cent in 1969 and 78 per cent in 1971. Nevertheless, this was still much higher than Ontario and Quebec. During the same period, independents expanded from only 6 per cent of the market to ll per cent. Imperial — the dominant firm here as elsewhere — gave up market share to others.

TABLE 5

GASOLINE MARKET SHARES IN ALBERTA, SELECTED YEARS 1955-65
(%)

Company	*1955*	*1957*	*1959*	*1961*	*1963*	*1965*
Imperial Oil	40.0*	35.8*	33.4*	31.4*	29.8*	29.7*
British American (Gulf)	20.0	18.4*	16.8*	16.0*	16.0*	15.4*
Gr. West Distrib. (Red Head)	3.0	3.3*	2.9*	2.7*	2.4*	
Anglo-American (Purity 99)	7.0	7.3	6.2	5.5	5.5*	
Royalite	0.3	2.9	3.7	4.4	4.5*	12.4*
Total B/A Royalite Group		21.7*	19.7*	18.7*	28.4*	27.8*
Shell	1.0*	2.7*	5.8*	8.4*	11.9*	11.1*
North Star	4.0	5.3	4.9	3.3*		
Canadian Oil (White Rose)	7.0	6.2	6.0	6.5	6.5*	5.4*
Total Shell Group	1.0*	2.7*	5.8*	11.7*	18.4*	16.5*
Texaco	14.0*	13.8*	13.5*	13.3*	13.4*	12.4*
Standard of B.C.				0.4	0.4	0.4
Pacific 66					1.0	3.7
Husky			1.2	1.7	1.5	2.2
U.F.A. Co-op	2.0	2.0	2.2	1.9	1.8	2.2
Department Stores		0.2	1.3	1.5	1.6	1.9
Other Non-Brands	1.7	2.1	2.1	3.0	3.7	3.2
Total "National" brand Majors and their Subsidiaries	55*	74*	77.3*	75.1*	90.0*	86.4*
Total Other Marketers	45	26	22.7	24.9	10.0	13.6
Total Sales	100%	100%	100%	100%	100%	100%

Note: National brand majors and their subsidiaries designated by asterisk*

Source: Province of Alberta, Gasoline Marketing in the Context of the Oil Industry, December 1968. p. 385.[21]

TABLE 6

GASOLINE MARKET SHARES ON THE PRAIRIES, SELECTED YEARS
1967-71
(%)

Company	*1967*	*1968*	*1969*	*1970*	*1971*
IOL	30.6	30.0	29.2	27.5	27.4
Shell	16.1	16.4	16.7	16.9	16.2
Texaco	11.9	11.9	12.1	11.5	10.9
Gulf	17.3	16.4	17.1	24.4	23.9
Royalite	10.4	9.7	7.8		
Pacific	2.7	3.0	3.3	3.5	3.5
Co-op	4.6	4.1	4.0	4.2	4.6
Private Brands	5.7	7.5	8.7	9.5	11.1
Husky	0.7	1.0	1.1	2.5	2.4

Source: Document # 119467, Imperial[22]

5. *The Pacific Market*

The Pacific market resembled the Atlantic market in that the four major brands together with one regional — Standard Oil of British Columbia — accounted for over 80 per cent of the market throughout the period. Up until 1963, their market share was generally about 90 per cent[1] (see Table 7). Starting from a high of 99 per cent in 1955, their market share declined to approximately 90 per cent in 1959 and 1961, and then increased to 93 per cent in 1963. Between 1963 and 1971, the share of these five firms declined steadily but was still at 84 per cent in 1971. The reason for this decline was two-fold. First, several smaller integrated refiners— Husky, Pacific and Union — had grown to 5 per cent of the market by 1971. Secondly, the independent segment expanded by about 4 per cent — from 7 per cent in 1963 to 11per cent in 1971. As in the other Canadian markets, Imperial Oil gave up market share throughout the period. Together with its subsidiary Home Oil it gave up about 10 per cent of the market between 1955 and 1971—about the same amount that was captured by the independent sector.

6. *Summary*

The foregoing information indicates that the structure of each of the five Canadian regions varied. In the area served by imported crude, one region — the Atlantic — was characterized by a stable, highly concentrated market structure. The four major brands and the large regional branded

1. Home Oil is to be included in Imperial's share since it was a fully-owned subsidiary of this company.

TABLE 7

MARKET SHARES IN THE PACIFIC
GASOLINE MARKET, SELECTED YEARS
(%)

Company	*1955*	*1959*	*1961*	*1963*	*1967*	*1969*	*1971*
Imperial	24	22.5	22.1	21.8	20.6	20.1	19.3
Home	12	9.6	9.0	8.4	8.1	6.6	6.5
Shell	20	16.3	15.8	15.3	14.8	14.4	14.3
Texaco	8	8.8	9.0	8.2	7.8	8.4	8.3
Gulf	14	14.7	14.8	18.8	13.8	13.6	15.7
Standard	21	19.0	19.0	20.2	20.8	19.9	20.2
Royalite	1	4.2	4.3	—	4.0	3.7	—
Pacific					2.4	2.7	2.8
Husky					0.4	0.4	0.5
Union					—	1.2	1.5
Private Brands	—	4.9	6.0	7.3	7.3	9.0	10.9

Notes: 1. In 1963 and 1971, Royalite is included in Gulf
2. All figures are for retail market

Source: 1967-1971: Document # 119468, Imperial[23]
1955-1963: An analysis of Competition and Price Behavior in the British Columbia Petroleum Industry, prepared for Imperial Oil Limited by the Stanford Research Institute, May, 1964, Table 6.

marketer accounted for 88 per cent of the retail gasoline market in 1954 and continued to do so in 1971. In Quebec, the market structure changed slightly over the period as the result of entry by certain multinationals who restricted themselves to only regional representation. In 1953, the four largest majors accounted for 84 per cent (including Champlain and Supertest as controlled by Imperial). By 1964, these four, plus British Petroleum and Petrofina, accounted for 80 per cent. By 1971, these six accounted for 79 per cent of the market. Since the two new entrants adopted the same type of distribution system as the existing majors, this minor change in structure would have had relatively little effect on performance. The difference between the Atlantic and Quebec regions that did have an impact upon performance was the identity of the fringe group of firms. In the Atlantic region, independent discounters remained relatively unimportant — accounting for only 1 per cent of the market by 1971. In Quebec, the discount segment grew from 4.4 per cent in 1960 to 13.6 per cent by 1970 (see Figure 3).

In that area of Canada served by domestic crude, there was one region that resembled Quebec and one that resembled the Atlantic region. Ontario like Quebec was relatively unconcentrated. In Ontario, the four major firms accounted for 62 per cent of the gasoline market in 1954, the eight largest for 93 per cent in 1954. In 1971, the four-firm ratio had fallen to 58 per cent, while the eight-firm ratio had fallen to 85 per cent. Mergers and new entrants

changed the identity of these firms but not their over-all characteristics. These were not firms which tended to compete against one another using price competition. The difference between Ontario and Quebec was that in Ontario eight firms — four national majors and four others accounted for 93 per cent of the market in 1954 and 85 per cent in 1971, while in Quebec, the four majors controlled 84 per cent in 1953; by 1971, two regionals had entered and the six together accounted for about 80 per cent. Another similarity between Ontario and Quebec can be found in the growth of the independent sector. Starting at about 7 per cent in 1960, the Ontario unbrandeds accounted for 14 per cent by 1970—a figure almost identical to that for Quebec in the latter year.

The Prairie and Pacific regions resembled the Atlantic region in terms of their high levels of market concentration. On the Prairies, concentration increased to a high point in the mid-nineteen sixties as a result of acquisitions by Gulf and Shell. The four national majors accounted for 86 per cent in 1967 and 78 per cent in 1971. In the Pacific market, the four national majors and the regional marketer — S.O.B.C.—had 99 per cent of the market in 1955 and 84 per cent in 1971. The difference in both these regions as compared to the Atlantic was the emergence of the independent segment. By 1971, it had reached about ll per cent on the Prairies and the Pacific coast, but only about 1 per cent in the Atlantic region.

Market share statistics such as these are only suggestive of performance. In many cases, only by understanding the nature of competition in a particular industry, can inferences be drawn as to whether the industry was 'concentrated' enough to prevent or to reduce competition. In this particular case, once it is established that the vertically integrated marketers tended to act similarly and it was these firms that always made up the largest four, or five, or six, or eight firms, then it is clear that concentration levels were equally high in all markets — at least in the context of the structure, behaviour, performance paradigm.

In what follows, it will be demonstrated that Ontario, which was the least concentrated region, whether measured in terms of the number of majors required to account for 80 per cent of the market or the size of the independents, was characterized by abnormally high margins. This was the result of both the concentrated nature of the industry, the behaviour of the majors in their relationship one to another, and the predation practised by this group against independents. As such, it is the behaviour and the performance analyses of this industry which must bear the focus of investigation. This inquiry refutes any claim that the industry is relatively unconcentrated by Canadian standards and, therefore, must be relatively competitive. It demonstrates that the majors were able to control the shape competition took and to restrict the growth of lower priced marketers — despite the appearance of relatively free entry and the existence of more than a handful of firms.

C. *Competition in Marketing: An Overview*

Neither the structure of the marketing sector taken by itself, nor the type of interaction between firms in this sector, serves to explain the behaviour of the industry. The agreements reached by the majors at the production and refining stages, along with the dominance of these vertically integrated firms, shaped the performance of the marketing sector. The behaviour of the marketing sector provides a manifestation of the success of the agreements that were reached at the upstream stages of production. By eschewing price competition and by adopting similar forms of non-price competition, an oligopolistic equilibrium in the marketing sector was established that kept prices at levels that the majors recognized were not sustainable in the face of unhindered competition.

Evidence that, for purposes of explaining marketing behaviour, the majors may be considered as having similar interests and to have acted as a unit comes in two forms. First, there are the statements that the majors considered themselves to be so similar that there was no purpose in distinguishing themselves one from another. Examples of this kind can be found in Imperial's presentation of its Ontario Automotive Strategy to its parent corporation (Exxon). Here Imperial claimed that the major companies:

> "... have a similar consumer offering involving wide representation, the same price, retail credit, heavy advertising, etc. ... They all use dealers for retail distribution and face common problems here with the dealer being typically a better supervisor than a manager, having short term interests and low satisfaction goals.
>
> "In summary, the differences between outlets under each brand outweigh the differences between the brands. Thus, from a stragegic point of view, they can be considered the same and we will talk about the Esso brand as representative of the group."
>
> (Document # 118390, March 10, 1972, Imperial)[24]

The similarity of offerings, and of marketing methods that Imperial referred to, extended beyond the largest majors to encompass the regional marketers as well. For instance, another Imperial study (Document # 179971),[25] after discussing Shell, Gulf, Texaco, British Petroleum, Supertest, Sunoco and Fina, stated that all the major brands had "similar consumer offerings and similar methods." The result, as Shell indicated, was that prices tended to be the same for all majors:

> "Historically, the market has been characterized by a common prevailing major brand price in each market area with most marketers pricing at the same level - normally DTW plus Dealer Margin. *The few mavericks usually did not have a significant influence on the market.*"
>
> Document # 35410, January 1973, Shell, emphasis added)[26]

What is significant about this observation is not just the statement that all the majors tended to price together, but that "mavericks" did not significantly

influence the market. Despite entry and the existence of a fringe of smaller firms, the majors' influence on the market predominated throughout most of the period.

While this evidence indicates that the majors operated similarly, it does not deal with the contention that a well-functioning competitive market will produce identical prices and product offerings. While this proposition is too simplistic to be of much use as a criterion for evaluating the performance of a market, it is voiced too often to be completely ignored. However, since the majors recognized that there was little competition among themselves, the similarity of prices can be ascribed, in this case, to a dearth of competition and not the reverse. For instance, Shell indicated that the growth of one major at the expense of another had generally only come via the acquisition route and not by internal expansion. In discussing its 1973 Strategic Plan, Shell noted:

> "As a fundamental principle, Marketing will participate in the growth of all light products, with the attempt to protect its overall national light oil market share of about 16½%.
>
> . . .
>
> "The overall light oil objective is neither a 'defeatist' one nor an unduly optimistic one. It *results* from the two basic alternatives of either planning long-term penetration or consciously ceding market position. The former inevitably invites competitive reaction in one form or another, resulting in depressed net income growth, overall profitability or both. *Measurable growth in excess of industry growth, historically, has been practicable only through acquisition.*"
>
> (Document # 27882, May 3, 1973, Shell, emphasis added in last sentence)[27]

This document manifests Shell's acceptance of the status quo, along with the accompanying lack of competition amongst the majors.

Related evidence from other companies confirms this picture of the industry. For instance, Imperial in a 1972 study of the desirability of increasing product prices, indicated that it considered itself the price leader in the industry (Document # 113686).[28] As such, it acted with the understanding that the other majors would coordinate their pricing decisions with those of Imperial. Corroborating evidence of this behaviour is found, for instance, in Texaco documents. Texaco was careful to pattern its prices after Imperial and the other majors. For instance, in 1968 Texaco followed Imperial's price increases in Ontario:

> "It is our recommendation that we follow *exactly* the pricing practices now being engaged in by Imperial Oil in the Ontario market as quickly as we can accurately determine what these are from area to area."
>
> (Document # 46276, February 14, 1968, Texaco, emphasis added)[29]

This practice can also be found elsewhere; in 1969, Texaco's Quebec Division Manager characterized Texaco's "approach" in Quebec, as one of "following

the majors, that is primarily Imperial Oil" (Document # 46255).[30] That Texaco generally coordinated its prices with all of the major national brands is reiterated three years later. In referring to the Quebec Division, Texaco noted that:

> "In principle, the Division maintains retail price equivalence with our three major competitors Imperial, Shell, and Gulf; . . . "
>
> (Document # 8679, March 1, 1972, Texaco)[31]

The fourth national brand major also adopted a follower role. The following quotation shows that Gulf patterned its prices after Shell and Imperial:

> "2. Our pricing strategy should be to move only after the other majors have moved first.
> 3. Our prices should be competitive with the higher of Imperial and Shell."
>
> (Document # 136596, May 8, 1974, Gulf)[32]

As a result of the parallel pricing policies followed by the majors, price competition was generally lacking in the industry. The price equilibrium, which the majors established, as Gulf noted, was "fairly comfortable" (Document # 60122).[33] In commenting on the industry, Gulf noted that there rarely was any tendency for the majors to compete with one another on the basis of price:

> ". . . there has been a marked reluctance on the part of the integrated companies to compete with each other in the retail market on the basis of product price. Until comparatively recent years competition was limited primarily to providing spatial convenience and service under the umbrella of a secure, fairly comfortable tankwagon price structure."
>
> (Document # 60122, July 21, 1971, Gulf)[34]

What emerges is a picture of the major oil companies acting together as a tightly-knit oligopoly during the late nineteen fifties and much of the nineteen sixties. Since they were reluctant to compete on price, their competition in the gasoline market was limited primarily to providing spatial convenience under the "umbrella" of a "secure, fairly comfortable" tankwagon price (Document # 60122-3).[35] Because of the profits to be made upstream in production and because of the high prices that had been established therein, the emphasis downstream was on building 'controlled' volume.

The critical importance of vertical integration in this process is stressed in an Imperial Oil document that discussed the development of the large integrated oil companies' distribution system:

> "The appearance of specialized sales outlets (gasoline, etc., but no repairs as a policy) was as a result of supplier pressure and supplier capital. It was not a natural outgrowth of retailing practices. Rather, it was brought about by the forward thrust of supply pressures which saw 'representation' and 'specialization' including 'exclusive dealing' as the way to secure the volumes which created attractive profits for the systems behind them."
>
> (Document # 117992. November 20. 1972. Imperial)[36]

As this document demonstrates, the majors treated marketing as the vehicle by which they extracted profits from the production sector — where prices had been kept high.

The primary way in which the oligopoly chose to compete for volume was through the building of service stations — a method that required large amounts of capital. British Petroleum emphasized that in order to develop 'controlled' volume in marketing, the majors resorted to heavy capital expenditures:

> "Traditionally, the major vertical producer-refiner- marketer has used his one readily available asset - capital - to control the gasoline business. As the ethical drug company uses research to guarantee his future profits . . . , the oil company has used capital to control gasoline sales."
>
> (Document # 9633, July 30, 1970, B.P.)[37]

As a result, service stations proliferated rapidly, especially in the late nineteen fifties. Texaco, in referring to this period, noted that "gasoline sales depended on real estate acquisition more than anything else" (Document # 56980).[38] As each company adopted the same strategy the volume per outlet remained low and average costs climbed to meet the high prices set by the oil companies. In referring to this period, Gulf admitted that the majors tended to avoid price competition and concentrated on non-price competition under the "umbrella" of high "comfortable" tankwagon prices (Document # 60122-3).[39]

A similar admission can be found in a Shell 1964 study. This study listed six marketing techniques that could be found in the petroleum industry, but noted that only the non-price methods were characteristic of the Canadian industry. The six methods were described as:

> ". . .
>
> a) nonprice competitive activities, in which reliance is placed on persuasive effort in attempting to manipulate demand; b) product rivalry, in which increases in the amount or quantity of the product are used to attract patrons; c) service competition, in which there are attempts to gain custom by offering a higher quality or a larger amount of service in connection with the sale of the product; d) indirect (or perhaps semidirect) price appeals, in which concessions are made but on some related product or service rather than on the principle item sold; e) selective price concessions, in which the discriminatory discounts are given where necessary to hold or gain patronage; and finally f) direct price concessions, in which open reductions are made in the price of the principal product, possible only after some competitor has reduced his price first."
>
> (Document # 44872, January 31, 1964, Shell)[40]

In commenting on these methods Shell pointed out that price competition was not prevalent in the Canadian industry. Referring to the above six methods, the study noted:

"Methods (a), (b) and (c) describe Shell's marketing tactics and generally the industry's over the period 1950 to 1959 where competition on a non-price basis prevailed. Under these conditions, the mechanism of marketing may be described as follows:

1) 'Stable' markets exist (in the short term) when the participants do not choose to compete on a price basis. (There are not many participants.)

2) There is a tendency, however, for competition to take the form of overbuilding as each participant trys (sic) to increase his share by more intensive development.

3) This may eventually lead to higher costs and higher prices (in the long term) producing a state of affairs ripe for new, more vigorous entrants."

(Document # 44872-3, January 31, 1964, Shell)[41]

Not only does this document describe the lack of price competition in the industry, but it also outlines the key problem that the majors faced — that of the emergence of new competitors with lower costs who could offer the consumer lower prices. Shell recognized that while the "stable" high price/high unit cost situation might have been an equilibrium as long as the oligopoly was composed primarily of the majors, it was not a stable equilibrium in the face of successful entry by firms who would not abide by the mode of high cost marketing techniques adopted by the majors.

A related point can be found in an Imperial document written in 1972. Focusing on the relationship between "forward integration" and the "optimization of profits" it pointed out that in the case of the marketing sector of the petroleum industry, forward integration resulted in high unit cost margins:

"The logic of 'forward integration' and the optimization of profits through that process has occurred in other industries successfully. The failure of the petroleum industry, however, was in not foreseeing that the retail portion was an integral part of the cost structure, and/or in believing that the consumer and other retailers would in perpetuity allow the high unit retail margins that were needed to support the number of outlets created by that supply drive."

(Document # 117992-3, November 20, 1972, Imperial)[42]

As a result of the high margins that developed in marketing, entry by new lower cost firms did occur; and the Imperial document goes on to acknowledge that it was the continuing struggle by the majors to protect their supply profits that explains the 'frictions' that developed— 'frictions' that grew as the majors reacted to entry by firms that did not abide by the high cost, high margin marketing technique:

"Most of the basic friction which exists today and has for years is, I believe, a direct out- growth of the conditions created at retail by this forward supply economics thrust and the struggle on the part of supplier managements to protect their supply profits from the retail costs inherent in the system they built."

(Document # 117993, November 20, 1972, Imperial)[43]

On several occasions, in some markets, independents entered the marketing sector — primarily in response to the high margins being earned. The first period occurred in the late nineteen fifties and early nineteen sixties. The effects were felt primarily in Ontario, Quebec, and British Columbia. Gulf, in referring to the early nineteen sixties, noted how the role of the independent changed and how price competition broke out:

> "Taking advantage of the high margins available, private brand retailers sought to win customers by posting prices well below those of the majors' outlets, offering the consumer lower price in lieu of convenience. There had, of course, always been a certain amount of private brand marketing, but the new discounters, taking advantage of the large mass markets made remarkable inroads in a very short period of time."
>
> (Document # 60123, July 21, 1971, Gulf)[44]

Shell's perception of the influence of the independent companies at this time was similar to that of Gulf:

> "In 1959, unbranded growth increased markedly with a sizeable gain in average annual throughput per outlet. . . . A price war resulted . . . "
>
> (Document # 44874, January 31, 1964, Shell)[45]

After a brief interlude when it engaged in price competition, the industry returned to its previous pattern. Texaco described the return to normal as follows:

> "In 1963 the industry settled down as everyone realised almost simultaneously the futility of using price as a motivator. The balance of the sixties was characterized by the emergence of aggressive promotional activity in lieu of discounts."
>
> (Document # 56980, Undated, Texaco)[46]

It is not the outbreak of competition but its relatively quick demise that is so startling. A Shell study on pricing practices, while admitting the presence of a few "mavericks", noted that they did not have a significant influence on the industry:

> "Historically, the market has been characterized by a common prevailing major brand price in each market area with most marketers pricing at the same level - normally DTW plus Dealer Margin. The few mavericks usually did not have a signicant influence on the market."
>
> (Document # 35410, January, 1973, Shell)[47]

By 1970, competition emerged, once again, from the independent sector. The majors all recognized that the independent sector presented a threat to their branded price structure. For instance, Shell pointed out:

> "In recent years with the rapid growth of the unbranded marketers and the widening of the spread between branded and unbranded prices, the common prevailing price has come under increasing pressure - largely because of the inherent

weakness in a one price system which fails to take into account differences in location, facilities, added services, type of operations, costs, etc.."

(Document # 35410, January 1973, Shell)[48]

Texaco, too, noted that the growth of independents threatened the branded distribution network. In 1972, Texaco's Assistant Manager Retail wrote:

"Present marketing problems arise from the growth of unbranded marketers supplied by both major and minor refiners of petroleum products. . . . "

. . .

"As a result the major full price branded service station is under severe pressure and is steadily losing market position."

(Document # 8786, April 7, 1972, Texaco)[49]

The same individual recommended that Texaco, in adopting a price policy, should "recognize that the unbranded marketer is our major threat" (Document # 8787).[50]

As was the case in the early nineteen sixties, the majors responded by lowering their prices and price competition emerged on a widespread scale for the first time since that period. Texaco outlined the response of the majors:

"Regarding the retail price situation across Canada, we should report a continuing depression in retail pricing. In certain markets, the majors have been forced to offer retailer allowances in order that their retailers can come down to within $0.03 and $0.04 of unbranded prices."

(Document # 53618, August 15, 1972, Texaco)[51]

The fact that price competition came from the independent sector demonstrates the effectiveness of the oligopoly's efforts to avoid price competition in the retail sector. The majors were able to rely on one another not to disturb the equilibrium because of the supply arrangements in existence in the refining sector. The major marketers, as a group, acted very differently from some of the independents and appreciated this difference. For example, Gulf indicated that it understood that "...Special Sales to major refiner-marketers have little effect, while sales to certain resellers have the result of setting the market price" (Document # 66143).[52]

The majors, as a group, reacted slowly to price competition from the independents. Imperial Oil noted how slow the reaction was:

"New competition has come from the growth of the discount brands such as XL, Spur, Martin to name a few in Ontario, and from mass merchandisers such as Eaton's, Simpsons-Sears and Canadian Tire. . . . "

. . .

"The major brand marketers, saddled with a large investment in full service retail outlets, have been slow to react to these new forms of competition."

(Document # 116600-1, Undated, Imperial)[53]

Texaco observed that the majors acted as a group:

> "All major brand companies are reluctant to lower retail pump prices to close the gap with private brand competition."
>
> (Document # 58392, June 14, 1971, Texaco)[54]

When the reaction of the majors finally occurred, it was uniformly adopted by the group. Each major evaluated the other's actions and then implemented policies that, while not always identical, were similar in purpose. One example of this is provided by the manner in which Texaco patterned its price response to the unbrandeds after the other majors:

> "Texaco's philosophy has been to wait until Imperial Oil or Shell and Gulf or any two of these competitors have assisted their retailers to establish lower retail pump prices."
>
> (Document # 58393, June 14, 1971, Texaco)[55]

Just as important as the jointness of the majors' actions was the fact that the reaction, when it came, was aimed at suppressing price competition. This had been the objective of the majors in the early nineteen sixties when the independents first caused a major outbreak of competition. At that time, the majors adopted a policy aimed at 'disciplining' the independents as a Texaco document noted:

> "The method of achieving price stability appears to be that of 'discipling' «sic» unbranded jobbers. . . ."
>
> (Document # 57439, November 22, 1962, Texaco)[56]

Their reaction in the early nineteen seventies had the same purpose — as subsequent sections will demonstrate. The majors coordinated their activities in this area and acted similarly. During much of the period under study, margins in marketing were kept high because the majors did not compete actively in price. When entry occurred, the majors jointly took steps to counter the competition and to return the industry to the status quo.

D. *Predation and Restrictive Trade Practices*

The marketing sector of the petroleum industry, in the post-war period, has been marked by long periods of high margins interspersed with short periods of price competition. Generally, competition among the majors took the form of advertising, games, credit card facilities, and the expansion of the dealer network. The net result was the development of a high-cost, inefficient marketing system that was challenged by marketers with much lower costs. Competition, when it emerged, primarily came from the entry of non-integrated independents.

The following sections analyze the extent to which the practices employed by the industry in response to the new entrants suppressed, eliminat-

ed, or reduced that competition. These practices can be classified into two groups. In the first group are the methods at the retailing sector used by the majors to meet the lower prices of the new entrants. In the second group are the ways in which the majors used the power they derived from vertical integration and their control of the refining sector to increase the product cost of the independents.

The practices in the retailing sector that were used by the majors to counter price competition did not involve general price reductions. Generally, the major companies devised policies that were selective and that were primarily aimed at those segments of the market where competition was most intense. Two of these practices provided subsidies to branded dealers — via allowance and consignment programmes. Allowance systems left the pricing decisions in the hands of the dealer; consignment programmes kept these decisions with the petroleum company. A third instrument chosen by the companies was the establishment of second brand operations that were concentrated in the same markets as the new entrants. Each of these tools permitted a selective response to falling prices occasioned by the new, less costly, marketers.

The issue is whether these practices were injurious to the performance of the industry. There are two ways to demonstrate that this was the case. First, it will be shown that the tactics were predatory in the traditional sense and were utilized to drive the new marketers from business. Secondly, it will be demonstrated that they were intended to have the effect of reducing the rate of new entry and of preventing the extension of price competition from one market to another. Most oligopolists, if they are to exploit market power, must contend with potential entrants. If the rate of entry can be reduced, the oligopoly can set a higher price.[1] In the Canadian petroleum industry certain pricing policies were used to accomplish this, which do not satisfy the normal criterion used in defining predation — the deliberate accrual of losses. These policies more properly fall into a category which shall be referred to as 'disciplinary' tools. New entrants were not necessarily eliminated, but their rate of growth was suppressed and the spread of price competition was slowed.

Any evaluation of the effect of a 'competitive' trade practice faces the difficulty of having to distinguish between legitimate and illegitimate forms of competition. The distinction must be made between price competition that occurs under genuinely competitive conditions and that which is predatory or disciplinary in nature. The difficulty in ascertaining the legitimacy of a particular reaction to entrants is that observed market results *per se* may not permit a differentiation. Predatory pricing policies may eliminate competitors — even

---

1 See D.W. Gaskins Jr., "Dynamic Limited Pricing: Optimal Pricing under Threat of Entry", *Journal of Economic Theory*, Vol. 3, 1971.

though the competitors are no less efficient. However, price competition that is not predatory may also result in the elimination of competitors. The elimination of the less efficient through price competition is a characteristic of a competitive industry.

Predatory pricing is not the only unfair trade practice whose effects are difficult to disentangle from the normal workings of competition. A 'disciplinary' pricing policy which is aimed at specific entrants, involves aspects of both predation and of price discrimination. Disciplinary pricing occurs when a dominant firm threatens both existing and potential marketers by reducing its price to meet lower prices set by other retailers with the intent of restoring prices to higher levels. As such, the practice of disciplinary pricing resembles predation both with respect to objectives and the method of implementation. The difference is that with disciplinary pricing policies the entrants need not be eliminated nor losses incurred by the disciplining party. In effect then, predation is just a more virulent form of a disciplinary pricing policy. In addition, a disciplinary pricing policy may be aimed only at specific submarkets where the new marketer is concentrated. As such, it may involve geographic price discrimination. Thus, this practice contains aspects of both predation and price discrimination.

Of course, the mere adoption of lower prices in markets where new petroleum marketers exist does not prove that a predatory policy or disciplinary price discrimination is being employed. The majors might merely have been adopting the innovative marketing techniques that were introduced by the independent marketers. The adoption of these techniques could have reduced the growth of the new entrants. It could also legitimately involve some degree of price discrimination, since the techniques would probably be first introduced in an area where the price elasticity was highest. In addition, the process of experimentation with new techniques cannot be expected to be introduced simultaneously in all markets. Therefore, the price discrimination that develops may be no more than the type of disequilibrium situation that characterizes a market in transition. These are precisely the instances of price discrimination that do not stem from the exploitation of market power in markets with differing price elasticities. What is obviously required is a criterion to permit a determination of whether a practice is legitimate or illegitimate.

One method by which predatory or disciplinary practices can be distinguished from legitimate forms of competition is on the basis of the intent of the user. Predatory practices are meant either to maintain or to create a monopolistic situation. This can be accomplished in one of two ways. First, a dominant firm may use its pricing policy to eliminate or it may attempt to discipline a competitor. The elimination of a competitor is the result that is commonly associated with detriment. However, the successful disciplining of a competitor has equally deleterious effects. For, in this case, the dominant firm

will be successful in persuading the competitor to follow its price leadership and to increase prices. Secondly, the dominant firm may have as its goal the containment of a local out-break of price competition or even its complete elimination. In the former case, the effect will be that some areas will either not receive the benefits of price competition or will only receive them after a delay. In the latter case, if predation succeeds, the dominant firm will be intent on moving prices from competitive to higher levels after the new entrant has been eliminated or disciplined.

The following sections will show that the marketing policies of the major petroleum companies were meant to accomplish one or both of these objectives. Three separate bodies of evidence support this position. When viewed together, the situation in which the integrated petroleum firms found themselves, their intentions, and their resulting actions lead to the conclusion that these companies systematically and deliberately adopted a set of policies that interfered with the competitive process to further their joint interests.

The marketing sector of the petroleum industry, characterized by high margins and oligopolistic rivalry, has been faced on a number of occasions with entry by more efficient marketers. These firms have found themselves able to sell gasoline at much lower margins than the majors for two reasons. First, they avoided the costly forms of non-price rivalry adopted by the majors. Secondly, they developed much higher volumes per station thereby exploiting the economies of station size. That the independents — competitors to the traditional branded networks — were more efficient and that the major marketers recognized this factor is important. For it dispels the often-repeated argument that the independent sector was unfairly competing because of its access to surplus offshore product; or that it irrationally sold gasoline at unreasonably low prices. Equally noteworthy is the fact that the majors recognized this sector as a serious competitive threat and that the marketing policies adopted by the majors were directed against it. This disproves the contention that the price discrimination which developed was unsystematic and was simply a reflection of the normal competitive process. That the independents were the focus of disciplinary policies employed by the majors constitutes evidence of systematic price discrimination of the type consistent with the existence of a monopolistic situation. Finally, the fact that companies which were subjected to these unfair marketing policies were more efficient must weigh heavily in an evaluation of the effects of the restrictive trade practices. For the elimination or the containment of new lower cost competitors by older less efficient but more financially powerful firms serves to deprive the public of the benefits to be gained from a freely competitive market.

Evidence will also be presented on profitability that indicates that the disciplinary policies followed by the majors can, in some cases, be classified as predatory. On the one hand, the majors drove their wholesale realizations down

in their existing networks to levels that did not cover their variable costs. In other cases, new distribution systems were set up that the companies fully expected to be unprofitable and that did incur losses. However, this evidence does not provide the sole or even primary focus of the analysis. Instead, it is the situation in which the majors found themselves and their intent to force the independents to raise their prices that provides conclusive evidence that normal competitive forces were not at work and that the majors used monopolistic practices to protect their position.

It should be noted that not only are the concepts of predation and disciplinary price discrimination difficult to distinguish *post hoc* from competitive practices but also their very existence has been questioned. Some writers have suggested that they are unlikely instruments for adoption. It is argued that, in the absence of barriers to entry, the use of predatory pricing is of little strategic value since a firm must continue to keep prices near the competitive level or risk the entry of new competitors. Stated in this form, the argument is illogical. For the essence of predation is that it is meant to serve, by itself, as an entry barrier. The barrier that is created is not an absolute cost disadvantage as entry barriers are often defined. Instead, the threat of the policy deters potential entrants by reducing the expected returns which the entrant anticipates when considering entry.

A credible threat of this type can just as effectively create an entry barrier as can the existence of economies of scale. This is recognized by Yamey, in an examination of predatory pricing in the shipping trade of the late nineteenth century:

> "The point is frequently made in the literature on predatory pricing that the practice makes little sense where entry into the industry or trade in question is easy. However, the Mogul story serves to illustrate a general point, namely, that predatory pricing or the threat of its use, may itself operate as an effective hindrance to new entry even in situations where the conventional barriers to entry are weak or absent."[1]

According to another argument, predation is an unlikely policy because it is not the most efficient tool available for the elimination of competitors.[2] Essentially those who would argue this suggest that the acquisition of competitors is less costly than price cutting. This argument suffers from two shortcomings. First, it assumes that price cutting will not affect the amount that will have to be paid for a competitor.[3] Secondly, it fails to consider the

---

1. See B. Yamey, "Predatory Price Cutting: Notes and Comments," *Journal of Law and Economics*, 1972, p. 141.

2. See Lester G. Telser, "Cutthroat Competition and the Long Purse," *Journal of Law and Economics*, October, 1966, pp. 259-77.

3. See F.M. Scherer, *Industrial Market Structure and Economic Performance*, Rand McNally, 1971, p. 275.

advantages of predation in restricting entry. A policy of acquisition may be far more costly than predation if entry is relatively easy. For it is reasonable to expect that the number of potential competitors which have to be acquired will be a function of the policy adopted to remove them. Predation could be less costly than acquisition if it affects not only present market occupants but also potential entrants. This argument suggests it is exactly in those industries where barriers to entry in their traditional form are weakest that some form of predation may most likely be found. It is here that potential entrants will be more important and where mere purchase of actual entrants will be least effective in restricting the number of competitors. The marketing sector of the petroleum industry satisfies these conditions and the evidence shows an extensive use of predatory pricing in this industry has occurred.

In what follows, it will be demonstrated that numerous marketing policies — temporary allowances, consignment, and second brands — were used as a response to independents by the major petroleum marketers. It will be shown that the petroleum companies had two objectives. First, policies were devised to minimize the cost of inhibiting the new lower cost forms of marketing. The majors' policies were implemented so that they did not cause the other members of the oligopoly to react in such a fashion as to cause a loss in discipline within the oligopoly. As shall be seen, different companies each chose their policies with the intent of stopping the spread of price competition — though the pricing techniques chosen sometimes differed by company. Secondly, the industry attempted not only to contain price reductions but also to develop sufficient control to permit the eventual restoration of prices. The intent was both to prevent prices from legitimately equating to the lower cost levels of the independents and also to move prices upwards after the independents had been disciplined. From these intentions it is clear that the policies of the predominant petroleum marketing firms were directed at the reduction and not the enhancement of competition. At the same time, these practices served not only to discriminate against certain markets and branded dealers but also to entrench an inefficient marketing system by slowing or stopping the spread of new distribution techniques that would have benefited the consumer.

The policies employed by the majors — temporary allowances, consignment selling, and fighting brands — all were aimed at the retail level. The objective of the majors was to reduce the profitability of the independents by reducing the retail price and thus by squeezing the independents' mark-up. An equally efficacious policy would have been the increase of wholesale relative to retail prices. The Canadian refining market is much more concentrated than that of the United States. In particular, there are fewer independent refiners. Both of these factors suggest the majors may have enjoyed sufficient market power in the refining sector to employ this policy. However, throughout much of the post-war period, much of eastern Canada was open to imports of product,

thereby reducing the degree of market power that the large vertically integrated producers enjoyed in the refining sector.[1] This situation changed after 1970. Therefore it is significant that it is during the post 1970 period that evidence of a squeeze being employed from the wholesale side can be found. As such, there is evidence that the petroleum companies employed predatory policies at both the retail and the wholesale level in order to entrench their control over the marketing sector.

E. *Containment of Independents in the Nineteen Fifties*

In the following sections the reaction of the majors to entry from the independent sector is examined. That entry occurred is undeniable. Whether it occurred at an unhindered rate and whether the effects of competition were sufficiently widespread is the issue that must be addressed. Until the late nineteen fifties and early nineteen sixties, the growth of the unbrandeds was relatively slow. As Shell noted when discussing this period:

> "Areas with depressed prices have existed since the early 1950's, however, these were localized [sic] and did not affect a large number of outlets."
>
> (Document # 44869, January 31, 1964, Shell)[57]

The relative lack of competition in gasoline marketing was the result of several factors. First, the structure of agreements in production and refining consolidated control at this level and made access to product difficult. The evidence cited in the refining volume indicated that it was the principle of many of the majors not to supply independents with product or to supply them at a price that would reduce their ability to compete in marketing. Therefore, entry was relatively difficult and independents achieved their greatest success in the post 1958 era when the international market grew more competitive and new entrants to the marketing sector of the Canadian industry could draw on offshore supply. However, certain independents did manage to obtain supply during the nineteen fifties and entered the marketing sector. The existing majors reacted by introducing selective price cutting to contain these firms and to force them to adopt a price level which fell only slightly below (1-2 cents per gallon) the majors' price structure. The purpose of these pricing practices was to control the rate of entry, to prevent their rapid growth, and in the long term to control the amount of price competition.

One example of the industry's own evaluation of the effectiveness of spot pricing policy in restraining entry is provided by the considerations that led Shell to acquire North Star Oil in 1960. North Star Oil was a fully-integrated

1. This was not true of the Prairies and it is significant that it was here that the independent sector took the longest to emerge.

oil company — marketing petroleum products, refining crude oil, and producing crude. Its operations were concentrated in the Prairie provinces. A key factor in Shell's decision was the extent to which the acquisition would not only broaden Shell's base in Canada but also add to market stability (Document # 41790).[58] One of the reasons the Prairie market was seen as stable was the improbability that any significant entry by unbranded marketers of gasoline would occur. Shell outlined two reasons for this. First, "the Prairie cities have small populations and low gasoline potential. This type of market does not attract the unbranded reseller" (Document # 41820).[59] Secondly, Imperial was able to contain competition from independents with aggressive spot pricing and Shell was confident this policy would be employed elsewhere. Shell described Imperial's actions and its belief that they would continue:

> "Esso establish the tank wagon price and obtain approximately one third of the total volume through company owned and dealer outlets. To protect their large investment Esso must maintain a policy of being competitive with any major marketer. This same attitude *would* be adopted towards unbranded as evidenced in Winnipeg where the unbranded retailers were being con- tained by neighbouring branded outlets selling competitively."
>
> (Document # 41820, September, 1959, Shell, emphasis added)[60]

Winnipeg was not the only city where the majors selectively reduced prices in order to contain competition from the unbrandeds. In many Ontario cities, the majors reacted to the independents' entry by reducing their branded price structure through the policies of consignment and temporary allowances. The resulting price wars followed a similar pattern.[1] The national majors, either independently or following the lead of a regional marketer, would drop prices to match an independent when it became evident that the independent was making inroads into a market. In many cases, evidence of communication of intent between the two largest majors — Imperial and Shell — exists. Such communication would have made it clear to both parties that the intent of a price reduction was the disciplining of an independent and not the disruption of the status quo equilibrium of high costs and high margins reached by the majors. After a time, Imperial, which played a leadership role generally, increased prices. Its object was to return margins and prices to the high levels required to meet the high costs of the branded network. If the independents did not follow or if the independents did not move to price levels that the majors found acceptable, then the price war would begin again. This type of behaviour disciplined the unbranded marketer and in some cases was successful in moving

1. The material for the account of these price wars that is contained in the next few pages is taken from Document # 123120-54[61] entitled "Price Wars in Ontario up to 1960" and Document # 123155-220[62] entitled "General Background Information on 1958 Greater Winnipeg Price War".

independents' prices to levels that were higher than those existing before the price war. Even when it did not do so, this action would have served to establish the majors' intention of pricing with any new unbranded marketer and, thereby, would have reduced the incentive for entry.

1. *Niagara Falls*

The history of the 1957-58 price war in Niagara Falls provides an illustration of all of the above points. As of 1957, "two unbranded cut-price outlets, namely — Booth and Sauder" (Document # 123121)[63]—were operating in the Niagara Falls market and retailing gasoline at 39.9 cents per gallon with "retail prices running from 43.9¢ to 44.5¢ for branded dealers in the area" (Document # 123121).[64] In 1957, a new independent — Gunning Fuel Oils Limited[1]— entered the market and also offered gasoline at 39.0 cents per gallon (Document # 123121).[65]

The majors and the regional marketers made their concern known to one another. Imperial, for instance, was aware that "Sun Oil made a survey in 1957 in Niagara Falls which indicated to them they were losing a large share of their market to the cut-price unbranded jobbers, but more especially to the Gunning outlets which featured modern stations with good service" (Document # 123121).[66] More direct contact came with Shell Oil as the Shell Oil representative had commented that they were losing volume to the unbrandeds and would soon begin pricing with these independents. Communications such as these had little purpose other than to ensure coordinated reaction or, at least, to avert any misinterpretation of pricing reductions that might have caused price competition to break out among the majors. Shell took the initiative on October 23, 1957, and reduced their retail prices to 40 cents per gallon. One day later, "Fina, Sun and B.A. moved to assist their dealers to sell at 40.0¢ per gallon" (Document # 123121).[67] Imperial's response to the unbrandeds was more aggressive. The following day, Imperial moved their pump prices to *match* the unbrandeds. The reduction of Imperial's branded price structure was aimed at the independents and, in particular, the new entrant Gunning Oil. Imperial adopted the strategy of matching Gunning Oil because it felt this would clear up the price war more quickly:

> "This action was taken after due consideration, on the basis that Gunning was a modern competitor, and that by meeting his price it was felt that the price war might be cleared up in a short period of time."
>
> (Document # 123121, Undated, Imperial)[68]

---

1. Gunning was later acquired by Gulf.

Imperial's price moves were immediately adopted by McColl-Frontenac, Canadian Oil, Reliance, Cities Service and Supertest who had waited until Imperial acted. B.A., Sun, Fina and Shell then modified their policies to meet those of Imperial.

Two months later, on January 20, 1958, Imperial attempted to affect a price restoration by saying "we withdrew our allowance in Niagara Falls area" and, as a result, "all the Imperial dealers reverted back to retail prices of approximately 43.9¢ per gallon" (Document # 123121).[69] None of the other companies followed and one week later on January 27th, 1958, Imperial reinstated their allowance and their retail prices returned to 39 cents per gallon.

On June 29th, Gunning Oil, the target of Imperial's pricing policies, dropped their retail price 7 cents to 31.9 cents per gallon. One day later, all integrated companies reduced their prices to Gunning's level —31.9 cents per gallon. This price war started to spread into the surrounding area.

"On July 29th, [one month after prices fell to the 31.9 cents level] all companies removed their allowance to their dealers and retail prices reverted to normal. The majority of retail outlets are presently selling their #2 grade gasoline between 42.9¢ and 43.9¢ per gallon, with Gunning at 40.9¢" (Document # 123122).[70] The majors — through the lead of Imperial — had succeeded in moving the prices of the major independent in the area up by almost 2 cents per gallon.

2. *St. Thomas*

In 1957, major brand prices in the St. Thomas area were 41.9 cents with an independent retailing at 39.9 cents. In the spring of 1957, a Supertest dealer dropped his price to 37.9 cents. Over the next six months a few dealers reacted to this price situation on their own by lowering their prices. In November, the independent dropped his price to 38.9 cents. This resulted in Sun Oil advising "all dealers that they would assist them if they would post a price of 40.9¢ per gallon and that they would guarantee their dealers a 5.00¢ margin" (Document # 123133).[71] During the next two weeks all companies, including Imperial Oil, followed this price decrease. On March 31st, Imperial Oil led a restoration attempt that was partially successful. On April 23rd, Sun Oil "again dropped their price to 40.9¢ guaranteeing a 5.00¢ margin, and on April 25th Imperial Oil, along with all companies, followed suit" (Document # 123133).[72] This situation lasted only five days. On April 30th, Imperial withdrew their allowances and "this time retail prices returned to a normal of 41.9¢, with the unbranded at 40.9¢" (Document # 123133).[73] As a result, major brand prices were the same as before the price war (i.e. 41.9 cents) but the independent's price had risen one cent (39.9 to 40.9 cents). Again it was Imperial which successfully led the price restoration in this market.

3. *Kitchener, Waterloo, Preston, Galt*

The Kitchener market in 1958 included two independent Reliance dealer outlets which had been retailing gasoline at 39.9 cents per gallon. Shell Oil was the first major company to react to these outlets and again their sales representative discussed Shell's strategy towards the unbrandeds with Imperial Oil.

On April 26th, all the Shell retail outlets in the Kitchener-Waterloo area posted prices of 39.9 cents per gallon matching the Reliance prices. Following this price move, Imperial stated:

> "The Shell sales representative advised that Shell intended to be competitive in any particular area, and stated that all accounts were receiving an allowance and were being guaranteed a 6.00¢ margin."
>
> (Document # 123139, Undated, Imperial)[74]

Two days later, on April 28th, Shell further reduced the retail price in the Kitchener market to 36.9 cents. "On April 29th, Imperial Oil and all other major marketers assisted their dealers by means of an allowance to meet the price of 36.9¢ per gallon..." (Document # 123139).[75] On May 12th, Shell further decreased pump prices to 32.9 cents. Imperial and all others followed. During the next week, Shell extended allowances to their dealers in Galt and Preston. This spread the price disturbance to these markets. On May 26th, Imperial took the lead in a restoration attempt by withdrawing allowances from their dealers. This was followed by all major companies and resulted in brand prices moving to levels of 41.9 cents and 42.9 cents per gallon. The Reliance dealers, however, increased their prices to their previous levels—39.9 cents. This led Shell to reinstitute allowances on June 18th at 39.9 cents per gallon. This move was followed by all competitors. Over the next month, pump prices fell to 32.9 cents per gallon. Finally, on July 23rd, Imperial Oil removed their allowance "followed by all competition and prices again returned to a normal of 41.9 to 42.9¢, with the Reliance dealers retailing at 40.9¢" (Document # 123139).[76] This was 1 cent above Reliance's original price and established only a 2 cent margin below the brandeds.

The pattern of the price wars described in these examples is similar. One of the majors or regional marketers — in many cases either Shell or Sun Oil — would drop their prices to meet those of the unbranded independents. Discussions between sales representatives of the majors served to clarify strategy and reduce the risk that an aggressive pricing posture by a major would be misinterpreted by Imperial Oil. While the above case studies already contain several references to such communication, there are other examples of this practice. For instance, in commenting on a pricing situation in Peterborough, Imperial stated:

> "The Shell sales representative has advised our sales representative that Shell cannot live in Peterborough unless the retail price of their product is the same as Vigor Oil's. They are definitely not prepared to give Vigor any spread."
>
> (Document # 123126, Undated, Imperial)[77]

Similarly, in referring to a pricing situation on Highway 35 near Orono, Imperial commented:

> "The Shell sales representative advised our sales representative that Shell were guaranteeing their dealer a 6.00¢ margin and advised our sales representative that they intended to cleanup the Orono situation by matching Vigor's price."
>
> (Document # 123134, Undated, Imperial)[78]

While other majors often were the first to implement a price subsidy programme to match the unbrandeds, it was Imperial, in most of these cases, which acted as the leader in attempting to restore prices. In Niagara Falls, Peterborough, Toronto, Windsor, London, St. Thomas, Orono, and Belleville-Trenton, Imperial indicated that it was the company which led the restoration of prices. And just as the other majors were careful to let Imperial know what their intentions were, so too did Imperial communicate its moves to the others. The case of Imperial's attempted restoration in the Winnipeg market in 1958 provides an example of Imperial's methods. Commenting on their withdrawal of allowances, Imperial noted:

> "Phase 3 began on July 7, when Imperial removed all allowance from their dealers. *This decision was reached on the morning of Friday, July 4, and the news was purposely given to our dealers on Friday in order to 'leak' the information to other oil companies*."
>
> (Document # 123211, September 8, 1958, Imperial, emphasis added)[79]

While ostensibly the method Imperial chose to implement a restoration of prices was the withdrawal of their subsidy programme, where dealers did not increase prices sufficiently, Imperial attempted to influence their dealers to increase prices. An example of this behaviour can be found in Winnipeg in early 1958. Imperial had withdrawn allowances in late December 1957 and was followed by B.A. and Canadian Oil. However, by the beginning of March, "the retail pricing situation was in a state of flux..." (Document # 123199).[80] Some of the B.A. dealers had continued to discount even after allowances had been withdrawn. This had caused a number of Imperial Oil dealers to continue to discount. Imperial was concerned that this "pricing situation on No. 2 gasoline was on the verge of breaking down" (Document # 123201).[81] As a result, Imperial noted that it put pressure on its dealers to increase prices:

> ". . . we had some discussion with those of our dealers who were selling at the 38.9¢ (approximately 1 cent cut) or lower level in counselling them with regard to loss of profit at this pump price."
>
> (Document # 123201, September 8, 1958, Imperial)[82]

During the periods of price competition, noted above, the majors relied upon two different instruments to subsidize their dealers. Temporary allowances left the pricing policy and the control of gasoline in the hands of the dealer though the companies exerted some influence over the price chosen in several ways. For instance, Imperial described the method used by B.A. (Gulf) in Winnipeg in May of 1958:

> "B.A. offered this allowance in a letter to their dealers if the dealer sold at or below maximum prices. *The prices were stated verbally to the dealer.*"
>
> (Document # 123202-3, September 8, 1958, Imperial, emphasis added)[83]

The method which Imperial employed in Winnipeg in June of the same year offered the dealer two options:

> "Option 'A' offered 8½¢ allowance if the dealer sold at or below 28.9¢ per gallon for Esso and 33.9¢ per gallon for Esso Extra. Option 'B' offered 5½¢ per gallon allowance if the dealer sold at or below. . . ."
>
> (Document # 123210, September 8, 1958, Imperial)[84]

Temporary allowances tended to be granted when the companies reduced prices over a wide geographic area. For instance, in each of the cities of Niagara Falls, St. Thomas and Kitchener-Waterloo, temporary allowances were used to combat the independents.

Consignment was used when the petroleum companies wished to be more selective in meeting competition. With consignment, the company maintained ownership of the gasoline, employing the dealer as agent and setting the final pump price itself. Consignment was a less costly disciplinary tool than allowances because it was more selective. Examples of its use in 1958 by Imperial can be found in both Toronto and Hamilton. For instance, in referring to the Toronto situation at the end of January 1958, Imperial described the location of the stations it had on consignment in order to fight price competition:

> "These locations were spread all over the City to handle pocket situations where competitors were posting prices below what could be considered as 'normal'."
>
> (Document # 123127, Undated, Imperial)[85]

Another example of the use of consignment can be found in Hamilton in 1958. There, Imperial, Shell and McColl-Frontenac implemented consignment at stations adjacent to an independent — Dominion Motors (Document # 123137).[86]

In addition to the pattern of oligopolistic reaction, the respective roles played by the different companies, and the instruments used, these examples also provide evidence of disciplinary intent. When Imperial dropped its branded prices to meet the independent in Hamilton, it indicated that this was done in

order to clear up the situation "in a short period of time" (Document # 123121).[87] Imperial reported that the Shell sales representative had informed it that Shell's actions on Highway 35 near Orono were "intended to cleanup the Orono situation by matching Vigor's price" (Document # 123134).[88] Cleaning or clearing up the situation must be interpreted to mean disciplining the independents to adopt a higher price level. That this was practised is stated more explicitly by Imperial when commenting on the reason North Star (purchased later by Shell) met one independent's price in Winnipeg but allowed another a margin:

> "This further strengthens the thought of apparent disciplinary action against Dominion by North Star. However, they may also be concerned with possible retaliatory action of Imperial if they met Car Mart and Polo Park prices on the same basis as they did in June."
>
> (Document # 123216, September 8, 1958, Imperial)[89]

Of interest is the fact that Imperial had two explanations of North Star's actions and both referred to disciplinary action. The first interpreted North Star's actions as intending to discipline one independent; the second was based on North Star's appreciation of Imperial's ability to engage in this exercise itself.

Imperial did not confine its observations to just the intent of North Star; nor did it leave any doubt as to what disciplining meant. It recognized that most of the majors had the same purpose and that the ultimate objective was to force unbranded prices upwards. In commenting upon the Winnipeg situation in the late nineteen fifties, Imperial stated:

> "The attitude of other major companies, McColl-Frontenac, B.A. and North Star, seems to be that they object to the large volumes being pumped through these major cut-price outlets on the basis that the outlets are drawing off gasoline volume that would be available to normal service station and dealer outlets if the cut-price outlets did not exist. They, therefore, object to these outlets' cut prices. *B.A.'s attitude was that by lowering the prices at B.A. outlets, this draw-off of volume would cease. Somehow they feel that this action will cause the cut-pricers to price higher after the war is over.*"
>
> (Document # 123163, September 8, 1958, Imperial, emphasis added)[90]

Therefore temporary allowances and consignment were used as early as the late nineteen fifties as disciplinary instruments against the unbranded, independent marketer. Three types of evidence have been developed in this section that confirm this. First, there were statements of intent by individual companies and statements of their understanding of the intent of others. These relate both to the methods to be used and to the intended effect. Secondly, there are the case studies that indicate that the intended policies were implemented. Finally, there is the evidence that the intended effect was accomplished. On the one hand, it is clear that in some instances independents were forced to raise

their prices. On the other, statements such as that of Shell regarding the effectiveness of containment in Winnipeg indicate that the majors regarded their policies as being effective.

As a result of these policies, the majors were able to maintain a steadily rising trend in the margins they earned from the marketing sector. Mutual forbearance and disciplinary pricing practices resulted in 'stable' markets and high prices. As already indicated, the least concentrated market was Ontario. Yet evidence shows that in the main urban market — Toronto — both wholesale and retail margins were pushed to levels that Imperial characterized as being "excessive" (Document # 127296).[91]

Figure 6, taken from a Shell study, illustrates for Metro Toronto the course of retailer margins (RM) and the difference between the realized tankwagon price and the cost of crude oil (G_2CD — what Shell called the gross gasoline crude differential). The retailer margin (RM) represents the amount accruing to the dealer. The gross gasoline crude differential (G_2CD) measures the "spread available to cover all refining and marketing costs and profit" (Document # 44870).[92] Figure 6, also graphs the sum of these two—($RM+G_2CD$)—a gross measure of the total marketing and refining spread.

Between 1950 and 1959, the majors forced the gross measure of total marketing and refining spread up by some 2½ cents per gallon from 17.45 cents per gallon in 1950 to 20 cents per gallon by 1958. The refining and wholesale spread was increased by about 1 cent per gallon while the dealer margin increased by 1½ cents per gallon. This evidence demonstrates that even in the face of major entry from regional marketers such as British Petroleum and Petrofina, little price deterioration developed. The interdependencies between the majors — both national and regional — along with selectively applied disciplinary pricing policies of the majors, served to maintain the price 'umbrella' under which the industry operated. It should be recalled that Ontario had the least concentrated market structure — with some eight firms accounting for 85 per cent of the gasoline retail market in 1954. Therefore, that these integrated companies were able to 'stabilize' the Ontario market and extract margins by the late nineteen fifties that Imperial referred to as being "excessive" (Document # 127296)[93] is indicative of the success of the disciplinary pricing policies employed by the majors. Finally, it places the market structure statistics presented earlier in perspective. The performance of the industry shows that the general levels of concentration that existed across Canada — all of which were higher than Ontario — were high enough that monopolistic practices interfered with the normal operation of the competitive marketplace.

F. *Marketing Efficiency and the Unbrandeds*

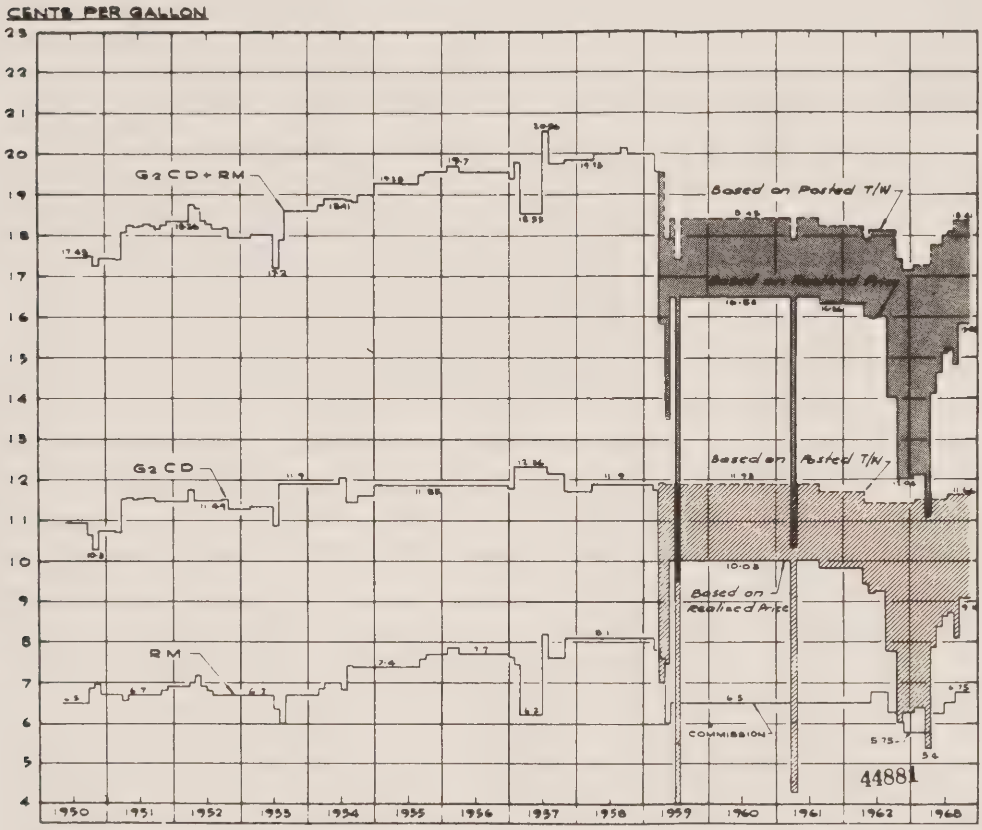
The existence of a price umbrella and the tendency of the majors to enhance their marketing costs by adopting various forms of non-price competi-

FIGURE 6

ACJ023640 I
1th

METRO TORONTO PRICE STUDY CHART 4

MARKETING MARGINS – REGULAR GRADE GASOLINE – METRO TORONTO
RETAILERS MARGIN – R.M. & COMMISSION
GROSS GASOLINE – CRUDE DIFFERENTIAL – G_2 CD
GROSS GASOLINE – CRUDE DIFFERENTIAL PLUS RETAILERS MARGINS – G_2 CD + R.M.



(Reproduction of Document #44881
'Figure 6' added)

tion suggest that the marketing sector performed poorly. Evidence of scattered instances of successful entry by independent marketers who adopted lower prices is possible confirmation of this thesis. However, one other explanation for the success of independents must be examined. This alternative explanation for the entry and operation of independent marketers is that their ability to compete depended upon their receiving product from refineries at 'distress' prices. During times of refinery excess capacity, there is a tendency for any refinery to price marginal sales at marginal costs. Because of refinery technology, marginal costs are low relative to average costs in the petroleum industry. Independents enter at such times, primarily using secondary facilities whose costs are also low, and market cut-rate gasoline. When the market for refined product tightens, the argument continues, many of the independents withdraw from the market only to reappear during the next period of excess refinery capacity.

When phrased in this fashion, there is undoubtedly some truth to the proposition. Cycles in excess refinery capacity probably explain the existence of some independents. Moreover, in this case, the very existence of the independent sector does not illustrate any shortcomings in the market. However, the issue at hand is not whether this explanation is valid but whether it is adequate. The evidence indicates that it is not. Internal company evaluations showed that the majors understood that serious marketers such as Canadian Tire, Simpsons-Sears, and other independents could establish a presence, present an acceptable image, and maintain a pump price advantage that was not dependent upon their receiving product at distress prices. The majors realized that these companies enjoyed a substantial cost advantage at both the wholesale and retail levels. This realization was not unique to one company; neither was it held to be relevant for only one time period. From the late nineteen fifties, when independents first gained a foothold, to the early nineteen seventies, the majors recognized that their branded network and its price structure were vulnerable to entry from retailers and wholesalers who were more efficient than themselves.

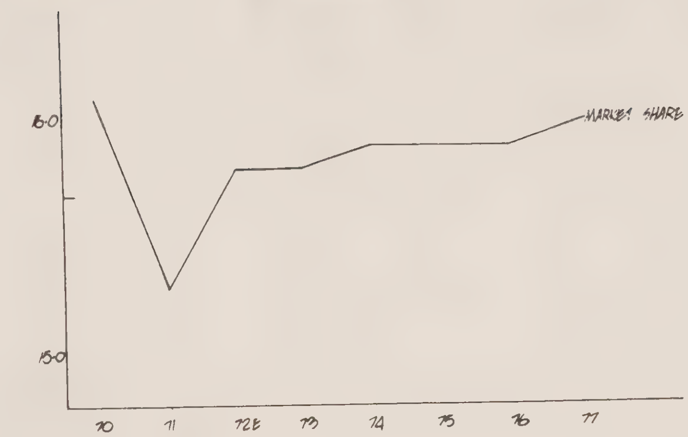
A Shell study of the Toronto gasoline market for the period 1950 to 1963 (Documents # 44864-91)[94] revealed that in comparison to a national unbranded gasoline retailer — probably Canadian Tire — Shell's service station network suffered two major disadvantages. First, the unbranded marketer had lower investment charges per gallon (3.0 cents vs. 4.6 cents per gallon) (Document # 44875).[95] Secondly, it had lower marketing expenses (7.0 cents vs. 10.9 cents per gallon) (Document # 44875).[96] The detail is presented in Table 8.

Instead of meeting the challenge offered by the independents by improving the efficiency of their marketing system, the majors continued to use spot pricing and price wars to hamper the independents. Thus the cost differential between the majors and the independents persisted. Shell showed, in a 1973 Retail Task Force on Marketing, the cost differentials that existed in the early nineteen seventies between the major brand service stations and the unbranded

FIGURE 7

EXHIBIT 1

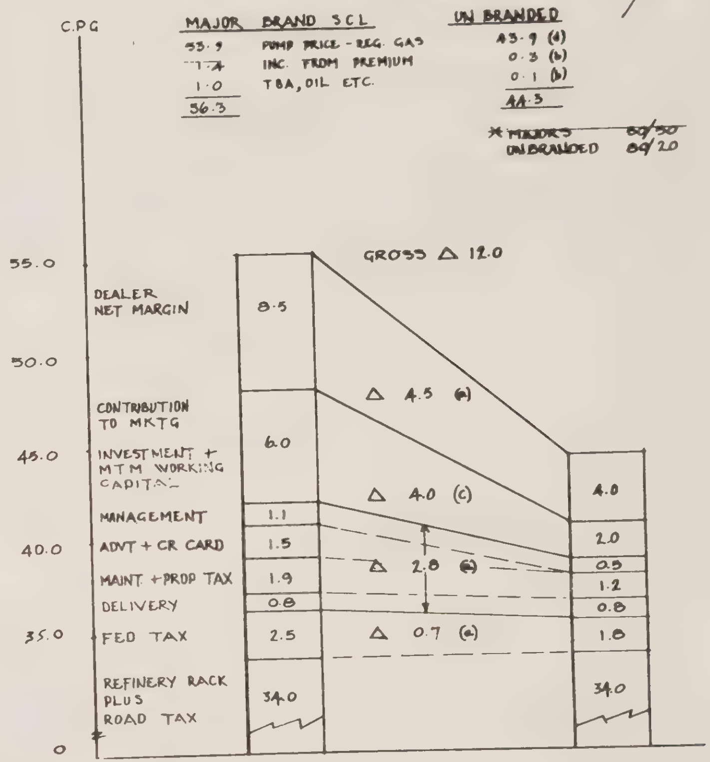
1973 LT PLAN
RETAIL DEPARTMENT



INDUSTRY MM GAL	4465	4610	4864	5132	5414	5712	6026	6357	5.58 AAI 1972-77
SHELL MMG	719	705	768	812	859	908	961	1016	5.83 AAI 1972-77
MARKET SHARE %	16.1	15.3	15.8	15.8	15.9	15.9	15.9	16.0	

ACJ019137R
EXHIBIT 2

MOTOR GASOLINE RETAILING
TYPICAL PRICE + COST STRUCTURE – TORONTO



SUMMARY

(a) COST SAVINGS	8.0
(b) LOWER OTHER INCOME	‹2.0›
	6.0
(c) LOWER PER GAL. RETURN	4.0
(d) DIFFERENCE AT PUMP	10.0

35348

(Reproduction of Document #35348
'Figure 7' added)

marketers. Figure 7 is reproduced from this study. It indicates that the independents enjoyed a 2.8 cents per gallon advantage on management, advertising, credit card, and maintenance; 4.0 cents per gallon on investment and contribution to marketing, and 4.5 cents per gallon on the dealer margin. The typical differential between the major and the unbranded (excluding federal sales tax) was reported to be 11.3 cents per gallon by the early nineteen seventies.

Compared to Shell's 1964 study, that was referred to above, there had been little change in the independents' operating margins. In 1964, Shell estimated that the large independent marketer required some 10.0 cents per gallon. In 1973, operating costs for the typical Toronto unbranded retailer were estimated at 8.5 cents per gallon. In contrast, Shell's total costs for the early nineteen sixties were estimated at 15.5 cents and had escalated to 19.8 cents in the 1973 study. Therefore, during the nineteen sixties and early nineteen seventies, Shell perceived the independent to have the type of cost structure that permitted this sector to price below the branded price structure of the majors. More importantly, the advantage was not derived from lower product acquisition costs. Rather it was based on lower wholesaler and retailer margins. Finally, Shell's own evidence indicates that it made virtually no progress in improving the efficiency of its own network.

Gulf Oil too indicated that the majors, reluctant to compete on price, concentrated their competitive energies on the provision of spatial convenience. Under the 'umbrella' of 'fat margins', the majors concentrated on developing 'controlled' volume by building service stations. The resulting distribution network was characterized by relatively low volumes per outlet and high investment costs per gallon sold. For instance, in discussing its long range plan in 1964, Gulf admitted that its own branded network was relatively inefficient.

> "While there is a great deal of uncertainty as to what trends may develop in marketing of petroleum products in the future, it is quite clear that in the competitive situation which exists in the industry today, we cannot continue many of the practices which have been common throughout the industry in recent years. For example, in retail gasoline marketing, many of our problems are centred around low volume service stations. We certainly cannot continue the high rate of capital investment per gallon for new service stations which has been typical of the industry in recent years."

(Document # 58970A, June 1964, Gulf)[97]

The crowding of the market place with convenience-oriented full-service stations led to a situation where the majors required high margins to cover their high investment costs. Gulf, like Shell, recognized that this problem still existed at the end of the nineteen sixties:

TABLE 8

METRO TORONTO PRICE STUDY COMPARISON PROFITABILITY SHELL SERVICE STATION OPERATION WITH NATIONAL UNBRANDED GASOLINE RETAILER (¢ per gallon)

	National Company		Shell — SCL	
Profitability Analysis	*Premium*	*Regular*	*Premium*	*Regular*
1962 Premium Ratio	10%		29%	
Pump Prices	44.90	39.90	44.9	39.9
Less Taxes	15.40	14.90	15.4	14.9
Pump Prices ex Taxes	29.50	25.00	29.50	25.00
Less Product Costs (a)	17.30	12.80	14.00	14.00
Gross Gasoline Margins	12.20	12.20	15.5	11.00
Wtd. Gross Gasoline Margin	12.2		12.3	
Freight & Delivery (Est) (b)	—		0.6	
Gross Gasoline Marketing Margin	12.2		11.7	
Expenses (c) — 1962				
Dealer Commission			6.8	
Retail Expenses (Prop. Taxes Plant Charge, Maintenance, Paint & Sign) (D-277)			1.3	
Wholesale Expenses				
Plant (Est.)			0.4	
District Office (D-277)			0.4	
Division Office (D-277)			0.6	
Credit Card Exp. (Est.)			0.3	
Other H.O. (Est.)			0.6	
Advertising (Est.)			0.5	
Sub-Total Wholesale Expense			2.8	
Total Expenses	7.0 (d)		10.9	
Cash Income from Gasoline	5.2		0.8	
Annual Charge sufficient to amortize investment	3.0 (e)		4.6 (f)	
Excess/(Deficiency)	2.2		(3.8)	

Notes: (a) Study indicates National Company currently purchased product at posted dealer tank truck price less 8 cents per gallon discount, delivered to various outlets. Suppliers, Texaco and Cities Service

(b) Freight and Delivery = Pipeline from Oakville plus trucking

(c) *Expenses*

Plant = Average Company cost before depreciation prorated to gasolines and distillates
Credit Card = estimated by Treasury at 0.35 cpg
Other H.O. = total dollars charged to marketing prorated to marketing sales (gasoline and distillates)
Advertising = retail dollars divided by Reseller Gasoline Sales

TABLE 8 (cont'd)

(d) Total Expenses — National Company

Coupon expenses @ 5%	2.0 cpg
Operating Expenses as below	5.0 cpg
Total Expenses	7.0 cpg

The National Company salary operates the gasoline retailing facilities at all but 2 of the unbranded outlets. The study breaks down the operating expenses of the 24 salaried outlets as follows:

	Annual M$
Wages — 200 men at $3,500 per year	700
Realty Taxes — $5,200 for 24 outlets	125
Business Taxes — $3,125 for 24 outlets	75
Utilities — $3,125 for 24 outlets	75
Sales Representatives (2)	20
All Other Overheads	100
Total Operating Costs	1,095

Assume approximately 20 MM gallons on average or 5.0 cpg

(e) Study indicates that 3.0 cents per gallon includes a reasonable return on capital invested in land, improvements and equipment to accommodate the retail gasoline operation.

(f) Shell's new Gross S.S. Investment estimated @ 50¢/gal. To meet requisite of 9% Earning Powers a minimum Cash Income of 15% of gross investment or 7.5¢/gal/year is required. Of this 7.5¢, 1.9¢ received through rent income and 1.0¢ from other goods for a remainder of 4.6¢.

Netback to Supplier Companies on Gasoline Sales to National Co.

		Premium (Cpg)		*Regular* (Cpg)
Posted Dealer T/T Price		27.7		22.7
Less F.S. Tax		2.4		1.9
T/T Price ex tax		25.3		20.8
Less 8 cpg discout on delivered product		8.0		8.0
Gross-Back		17.3		12.8
Weighted at 10% Prem. Ratio			13.25	
Less Wholesale Expenses				
Freight & Delivery	0.6 cpg			
Plant	0.4 cpg			
Overheads (Nominal)	0.5 cpg			
Total	1.5		1.5	
Cash Income			11.75	

Source: Document # 44887-8, Shell[98]

"Here, then, is the major oil companies' dilemma. The major oil company, saddled with a high investment in retail facilities . . .cannot meet the resellers price without, in the short term, accepting a lower return on its investment."

(Document # 60118, July 21, 1971, Gulf)[99]

(Document # 71531, September 9, 1971, Gulf)[100]

"The high margin between non-branded product supply cost and branded pump price is caused by:

a) An oversaturation of retail outlets with
- high investment costs
- low gallonage

- high pumping cost
- and corresponding high pump prices."

(Document # 67193, July 3, 1970, Gulf)[101]

The same problem of high costs due to overbuilding was again noted by Gulf in 1972:

"THE KEY PROBLEM THAT ALL MAJOR COMPANIES HAVE IS THE LARGE NUMBER OF LOW VOLUME, LOW POTENTIAL NON VIABLE STATIONS RESULTING FROM THE EXPANSION IN THE 50'S AND EARLY 60'S.

"THESE ARE THE MILLSTONES AROUND THE NECK OF THE INDUSTRY AND *HAVE ONLY EXISTED AS LONG AS THERE WERE FAT MARGINS AVAILABLE*. THEY ARE NOT ABLE TO COMPETE IF MARGINS ARE NARROWED AND ARE NOT CAPABLE OF DEVELOPING THE INCREASED VOLUME REQUIRED."

(Document # 69570, November 30, 1972, Gulf, emphasis added)[102]

Not only do these statements confirm that inefficiencies in the major brand network continued to exist throughout the nineteen sixties, but they also confirm that the industry was able to extract high prices via 'fat margins' to perpetuate these inefficiencies. As such they demonstrate the detriment associated with the majors, monopolistic practices.

An indication of the extent of these inefficiencies is provided by a set of Gulf studies that evaluated the cost differentials between itself and major independents. In 1968, a study of the effectiveness of Gulf's retail capital-investments from 1957-1966 (Document # 74526-643)[103] indicated that, even in 1967, wholesale realizations were not sufficient to cover Gulf's cost of capital. The analysis showed that for Canada as a whole:

(a) the retail capital investment for 500 new outlets averaged 45¢ per gallon.[1]

(b) to support this investment to earn 7% after tax required a 9.1¢ per gallon margin.

(c) in a year of what Gulf considered to be firm prices, the wholesale margin was considerably less. (Document # 74569).[104]

It was clear that the existing price structure did not permit "an acceptable return" on capital investment (Document # 74552).[105]

The reason for this, as Gulf recognized, was that the marketing costs of the independents were lower than its own branded costs. Table 9, from a Gulf September 1971 Prairie Reseller Study, compares the price-cost structure of a major brand outlet versus an unbranded outlet — that of Turbo.

---

1. cf. Shell's estimate of 50 cents per gallon reported in Table 1.

TABLE 9

COMPARISON OF MAJOR BRAND COSTS
TO PRIVATE BRAND COSTS
(¢ per gallon)

Prices and Costs	*Major Brand*	*Turbo*
Pump Price	46.9	41.9
Provincial Tax	15.0	15.0
Dealer Margin	10.2	9.3
Wholesale Margin	7.8	3.7
Standard Cost of Product Including Federal Sales Tax	13.9	13.9

Source: Document # 71485, Gulf[106]

This study indicates that the unbranded's wholesale costs at 3.7 cents per gallon were well under the 9 cents Gulf required for an acceptable rate of return. It also shows the dealer margin of the unbranded was below that of the branded.

The unbranded's advantage on the retail side stemmed in part from volume economies. A 1970 Gulf study noted that because of the small size of most branded outlets, a retail margin of 8½ cents to 9 cents per gallon was required to cover costs:

"... at the present time in Canada the bulk of motor gasoline sales is through relatively small volume service stations. These outlets require a margin between the wholesale price and the pump price of at least 8½ cents to 9 cents per gallon to exist."

(Document # 75530, April 1970, Gulf)[107]

An indication of the volume economies available due to higher volumes per outlet is provided by a 1971 Gulf study of service station economics. Costs considered are the capital investment to provide a network of outlets and the labour costs required to pump gasoline. The Gulf study noted:

"A service station which costs, say $200,000 is technically capable of pumping several million gallons per year: Some reseller outlets do. If we arbitarily [sic] place the annual capital carrying cost plus occupancy cost of this outlet at say $20,000 per year (10%), the cost per gallon will amount to: —

At 250,000 gallons per year - 8.0 cents per gallon
At 500,000 gallons per year - 4.0 cents per gallon
At 1,000,000 gallons per year - 2.0 cents per gallon
At 2,000,000 gallons per year - 1.0 cents per gallon

"Similarly, to provide an acceptable oil company level of customer service at a 24 hour station assuming intelligent supervision and current basic labour rates, the cost of pumping per gallon will amount to:-

At 250,000 gallons per year 8.5 cents per gallon
At 500,000 gallons per year 5.4 cents per gallon
At 1,000,000 gallons per year 4.3 cents per gallon
At 2,000,000 gallons per year 3.8 cents per gallon

"Hence, adding the two factors of facility provision and labour cost we see that the combined cost of providing these benefits to the customer varies between say 18 cents per gallon at 250,000 gallons per year down to about 5 cents per gallon at 2 million gallons per year."

(Document # 60114-5, July 21, 1971, Gulf)[108]

The Gulf network was relatively expensive because of its low average throughput and the resulting lack of volume economies. Between 1968 and 1970, average throughput climbed only from 90,000 gallons to 103,000 gallons per outlet (Document # 74921).[109] In a study of the Prairie reseller market, Gulf's figures for this region were given as 76,000 gallons per year as compared to the average volume of 237,000 gallons per year pumped at a private brand outlet (Document # 60020).[110] In light of the previously quoted study, it is apparent why the branded service station network had such high costs.

In addition to lower costs due to volume economies, some resellers obtained an additional advantage over the majors by adopting less costly services. The Gulf study described these cost advantages:

"In the case of a reseller gasbar selling a nameless brand of gasoline, offering poor customer service without the advantage of a credit card system — the compensating customer attraction is purely price. Certainly the reseller's costs are low — a secondary location probably a small lot, sometimes a shack for a sales office and the customer waits in line for service. It is extremely difficult to pin down the resellers costs because of the variety of marketing situations existing. Certain petroleum jobbers own or lease their own outlets; others act as suppliers to independent retailers. We have heard of resellers operating outlets through commission agents for 3 cents per gallon: That is, the labour cost for pumping is 3 cents per gallon or about half the normal oil company cost."

(Document # 60116, July 21, 1971, Gulf)[111]

Shell, like Gulf, also recognized that the independents' cost advantages stemmed from more than one source. In assessing the growth of the unbranded marketer in the early nineteen seventies, the basic disadvantage of the branded network was described as the result of two factors:

"The discounter uses the absence of direct current brand support expenses to cut his price, but additionally he draws on historic cost structure differences and the volume multiplier. . . ."

(Document # 30690, May 23, 1972, Shell)[112]

In summary, Gulf recognized that it faced competition on two fronts from marketers who could afford to operate substantially below the 16 to 21 cents per gallon margin that was being extracted by Gulf in the late nineteen

sixties and early nineteen seventies (Document # 60113).[113] On the one hand, there were marketers like Canadian Tire, Simpsons-Sears, Woodwards and Hudson's Bay. These companies offered a quality of product similar to the majors but they took advantage of the volume economies to price below the majors' branded price structure. On the other hand, there was a panopoly of other independents whose costs were lower because they offered fewer services — no credit, slower service or less convenient but less costly locations.

Imperial, like Gulf and Shell, recognized that the independent offered a threat to the branded price structure for exactly the same reasons; the lower cost structure of independents allowed them to charge lower prices and this promised to gradually draw off customers from the branded networks. In a 1965 study of the Ontario Retail Gasoline Market, Imperial summarized the type of independents that it faced:

> "As well as the normal brand outlets there has been a growth in three other types of retailers which might be classified as:
>
> 1. Mass merchandisers, such as discount and department stores, which have added gasoline as an additional line to their many other goods.
> 2. The automotive supply stores.
> 3. Unbranded discounters.
>
> "While these new retailers vary in many respects, they have several characteristics in common. They generally are not manufacturers of the product which they sell. They often offer a price incentive to the motorist. They primarily locate only in areas with sufficient population density to provide high volume, low unit cost operation. They often hold overhead to a minimum by offering none of the additional services, such as credit, which are offered by the major companies."
>
> (Document # 118982-3, May 1965, Imperial)[114]

Several Imperial studies confirm the existence of the cost advantage of the independents outlined in the Shell and Gulf studies. In November 1969, Imperial Oil calculated the laid-down cost of gasoline in Quebec City for product from its own refinery at Montreal as compared to the cost of product imports that were supplying independents. From this, it then prepared a comparison of the margins being earned by itself and by independent marketers. Table 10 presents this comparison. Two points are noteworthy.

First, the advantage in eastern Canada of independents caused by imported product was not due solely to their lower product costs. Even though Imperial estimated the acquisition costs of independents to be 1.6 to 3.2 cents per gallon below its own refined product costs, it recognized that the independents could afford to discount by up to 5.0 cents per gallon. Secondly, the margin taken by independents was much less than that which Imperial required. The margin being taken by independents lay between 7.7 and 9.3 cents per gallon. Imperial's margin was 11.1 cents per gallon and even this "did not include any

TABLE 10

A COMPARISON OF MARKETING MARGINS IN QUEBEC CITY FOR ESSO VERSUS PRIVATE BRANDS
(¢ per gallon)

Prices and Costs	*Esso supplied from*	*Private Brands supplies by Imports from*	
	Montreal	Caribbean	Italy
Assumed Pump Price	46.9	41.9	41.9
Road Tax	19.0	19.0	19.0
Net	27.9	22.9	22.9
Product Cost	16.8	14.2	12.6
Importer Margin		1.0	1.0
Marketing Margin	11.1	7.7	9.3

Source: Document # 90995, Imperial[115]

provision for service station costs or return" (Document # 90990).[116] Therefore, the difference in the costs of Imperial's system versus those of its independent competitors was even greater than this table indicates.

A second study, prepared in 1970, evaluates the effects of a tightening of import controls over product crossing the National Oil Policy line into Ontario (Document # 120059-67).[117] Imperial noted that the independents appeared to be "pricing in relation to costs and not to major's prices"[1] (Document # 120064).[118] It prepared information — presented in Table 11— that permits comparison of the price/cost margins of the majors, the "normal private brand" who purchased product from a domestic refiner, and a "discount private brand" who used imported product. In this study, the discounter is characterized as having a wholesale/retail margin of only 7.8 cents per gallon; "the normal private brand", a margin of some 11.1 cents per gallon; and the major, a margin of 17.4 cents per gallon. The "discount private brand" station enjoyed less than a 1 cent advantage in product acquisition but was characterized as being able to discount by up to 11cents per gallon because of its lower wholesale and retail costs.

Additional data from Imperial on the superior performance of the independent sector is available. In March of 1972, Imperial Oil presented a report on its Ontario Automotive Strategy to Exxon. As background for this, a

1. As shall be documented, the disciplinary pricing policies of the majors were aimed at preventing the independents from "pricing in relation to costs" and forcing them to price in relation "to majors's prices".

TABLE 11

PRICE/COST RELATIONSHIP, MOTOR GASOLINE,
ONTARIO, 1970
(¢ per gallon)

Prices and Costs	*Major*	*"Normal" Private Brand*	*Discount Private Brand*
Pump Price	50.9	44.9	39.9
Road Tax	18.0	18.0	18.0
Net of Tax	32.9	26.9	21.9
Retail Margin	9.5	6.0	5.0
	23.4	20.9	16.9
Sales Tax	2.1	2.1	1.6
	21.3	18.8	15.3
Wholesale Margin	7.9	5.1	2.8
Product Cost	13.4	13.7	12.5
(Basis)	CER + 0%	Jobber Price	Imports f.o.b. tankage

Source: Document # 120066, Imperial[119]

lengthy study of performance was prepared. Excerpts from this document confirm Imperial's appreciation of the superior operating efficiency of the independents. The Ontario study divided the independents into three classifications:

"Three distinct and successful approaches to the market have been observed and we have selected a representative of each type for analysis.

(1) The price leader with the lowest price in the market, seldom offering anything other than cheap gasoline at modest outlets. . . .Howden XL typifies this low cost low price approach to the market.

(2) The retailer who offers services similar to major brands but maintains relatively low cost wholesale and retail operations. Facility is typically clean and attractive and can be a gas bar or a conventional station offering car maintenance services normally associated with major brand conventional stations. Cash saving is offered on gasoline, but the discount is seldom as high as the price leader offers. Although we observed eight such brands, five (including our Econo brand) are owned by major companies. We have selected an independent, Arrow Petroleum, for analysis because it is easier to isolate all aspects of the operation with an independent than it is with an integrated operation.

(3) There are four marketers whose principal retail offering is full price gasoline cross merchandised either with free coupons valid on merchandise purchases or with instant saving via discount on a car wash. Canadian Tire Corporation dominates this class of retailer, accounting for about 60% of the 2.4 MM BBLS annual sales and for this reason has been selected for economic analysis."

(Document # 178557-8, Undated, Imperial)[120]

A detailed analysis of the economies of each of these independents as compared to Imperial's brand network was undertaken. The results are summarized in Table 12. Imperial concluded that the independents had a product cost advantage of from .5 to 2.5 cents per gallon. On the other hand their wholesale cost advantage ranged from 1.8 to 2.7 cents per gallon and their retail cost advantage was between 3.5 to 8.5 cents per gallon.

Table 13 presents data, not on perceived costs, but on actual margins. Here, it can be seen that, as of 1971, Imperial's wholesale and retail margins were some 17.2 cents per gallon as compared to between 4.7 and 13.7 cents per gallon for the discounters. The difference in efficiencies between the two systems was reflected in retail prices charged the consumer.

TABLE 12

ONTARIO — DISCOUNT BRAND ECONOMICS, 1971

	Urban Outlets			*Non-Urban Outlets*		
Discount Economics	*Canadian Tire*	*Arrow*	*Esso C.O.S.S.*	*XL*	*XL*	*Esso Dealer*
DISCOUNT	10%	4¢	—	13¢	9¢	—
MOGAS MG/YR	1,500	300	300	1,000	300	150
W/R PROFIT ¢/I.G.	8.6	5.3	3.5	1.9	3.4	4.2
W/R RETURN %	25	13	3	36	16	9
Comparison to Esso				*Minimum*		*Maximum*
MOGAS SUPPLY ADVANTAGE vs SIRV				0.5¢/I.G.		2.5¢/I.G.
WHOLESALE COST ADVANTAGE				1.8		2.7
RETAIL COST ADVANTAGE				3.5		8.5

Source: Document # 179976, Imperial[121]

Imperial also performed a similar analysis for the Quebec market. Table 14 summarizes the results of Imperial's comparison of its own system to two types of independent operations in Quebec — the Calex full service station operations and three different types of gas bars. The product cost advantage possessed by the independents varied at a minimum from 0.4 cents per gallon to a maximum of 1.3 cents per gallon. Their total cost advantage varied in range from 4.1 to 10.4 cents per gallon. As in Ontario, the independents main advantage lay in their lower wholesale and retail costs.

TABLE 13

ONTARIO AUTOMOTIVE STRATEGY

BACKGROUND

1. DISCOUNT MARKETERS HAVE A LOWER COST STRUCTURE THAN MAJOR BRANDS: THEY THUS REQUIRE LOWER MARGINS AND CAN CHARGE LOWER PRICES.

GRADE 2 *¢/I.G. — 1971*	*ESSO*	*MINIMUM DISCOUNTER*	*MAXIMUM DISCOUNTER*
MARGIN — WHOLESALE	6.7	6.7	2.7
— RETAIL	10.5	7.0	2.0
— TOTAL	17.2	13.7	4.7
PRICE DIFFERENTIAL		4	13

2. THE PRICE ATTRACTION OF DISCOUNT MARKETERS HAS BROUGHT THEM RAPID GROWTH IN VOLUME AND MARKET SHARE AT THE EXPENSE OF ESSO AND OTHER MAJOR BRANDS.

	VOLUME-MMB		*SHARE — %*	
	1960	*1970*	*1960*	*1970*
DISCOUNT	1.8	6.9	6.6	14.6
MAJOR	24.9	40.4	93.4	85.4

Source: Document # 180143, Imperial[122]

TABLE 14

QUEBEC AUTOMOTIVE — DISCOUNT BRAND ECONOMICS

DISCOUNT ECONOMICS	*CALEX C.O.S.S.*	*IGS GAS BAR*	*SPUR GAS BAR*	*GOLDEN EAGLE GAS BAR*
NO. OUTLETS	84	40	143	157
DISCOUNT (¢/G)	8.0	6.0*	6.0	8.0
TYPICAL VOLUME (MG)	250	300	250	200
W/R PROFIT (A.T.) (¢/G)	2.4	2.3	2.5	(1.1)
W/R RETURN (%)	12	12	11	—
*PLUS 5% COUPON				

	MAXIMUM	*MINIMUM*
COMPARISON WITH ESSO (¢/G)		
SUPPLY VS. SIRV	1.3	0.4
WHOLESALE COST ADVANTAGE	4.3	(.1)
RETAIL COST ADVANTAGE	4.8	3.8
TOTAL COST ADVANTAGE	10.4	4.1

Source: Document # IGDS 1335, Imperial[123]

In summary, it was Imperial's opinion that the *primary* advantage of the independents lay not in lower product acquisition costs but in lower marketing costs. For example, in the final report of the Ontario Study Imperial noted:

> "Much analysis has gone into the various types of discount brand outlets we face. Here are four which represent over 40% of the discount total. In urban centres, the two most common are Canadian Tire, using a coupon to cross merchandise gasoline with their stores, and chains like Arrow using a dealer system and marginal properties. In comparison, the typical Esso company-owned station has a lower profit and return.
>
> "In the non-urban areas, we face a host of brands of which XL is typical. They have a few very high volume stations at minimum prices but the majority of their outlets are dealer-owned in secondary locations, often with additional sources of income. . . .
>
> "Looking at the detailed economics of all four competitors, we see that the cost of their product ranges from ½¢ to 2½¢ per gallon below SIRV. They have a wholesale cost advantage of 2-3¢ per gallon, primarily due to our facility costs, and they have a retail cost advantage of 3½-8½¢ per gallon versus major brand dealer margins.
>
> "In summary, their economic advantage is not primarily due to cheaper supply but comes about from a different consumer offering and thus lower marketing costs. They have used price to attract volume and have achieved lower costs and higher returns accordingly."
>
> (Document # 118394-5, March 10, 1972, Imperial)[124]

This is not the only Imperial document that makes this point. Nor is it the only one confirming that the major brand offering was high cost and convenience oriented and that it was vulnerable to low cost forms of competition. In a December 1972 analysis entitled "Automotive Strategy— Public Affairs Analysis", it was pointed out that the "traditional consumer offering" was through a conventional service station with bays but this traditional offering is "high cost" (Document # 118886).[125]

> "This system of retailing gasoline requires a substantial capital investment and high operating costs for both the wholesaler and the retailer. The majority of motorists perceived the value of the full-service offering — however the high costs of this system made it vulnerable to new forms of competition which might put together a low cost offering and attract customers with a price discount in lieu of some services."
>
> (Document # 118887, December 12, 1972, Imperial)[126]

The different types of competition that threatened the traditional form of branded retailing were classified as providing "bonus offering, discount offering and deep discount offering." They were described as follows:

"(a) *Bonus Offering*: Successful retailers, such as Canadian Tire, Woodwards, Eatons and Simpsons entered the gasoline market and were very successful in building up large volume sales at lower prices. Canadian Tire was very successful with a bonus coupon which was redeemable upon store merchandise.

(b) *Discount Offering*: Individual entrepreneurs and chain operators such as Arrow, Premium, Spur, etc. entered the business offering a moderate discount of 5¢ to 6¢ off major brand prices.

(c) *Deep Discount Offering*: Retailers such as XL, Martin, Calex, Suny's, Turbo, etc. entered the market with a deep discount in the range of 10¢ to 12¢ off major brand prices. They appealed to consumers who view price as everything and are willing to forego brand assurance and convenience."

(Document # 118887, December 12, 1972, Imperial)[127]

In discussing the 'performance' of these discount brands, Imperial stressed that the independents did not enjoy "a significant cost advantage in obtaining gasoline supplies"; rather, their "principle advantage" lay in their "low cost marketing activities":

"The discount brands do not enjoy a significant cost advantage in obtaining gasoline supplies. Their principle advantage lies in their low cost marketing activities. At the retail level some operators such as Suny's work on a 2¢/G dealer margin which is 8¢/G lower than the 10.5¢/G margin of major brand dealers in Toronto. At the wholesale level a typical discounter can operate at 3¢/G less than Imperial because of less costly facilities, no advertising and no credit."

(Document # 118887, December 12, 1972, Imperial, emphasis added)[128]

Finally, there is evidence from a draft of Imperial Oil's "Presentation to the Ontario Government on Gasoline Retailing" that clearly states that the independents "are able to sell at substantially lower prices . . . because they are more efficient low cost marketers at both the wholesale and retail level" and not "because of significant differences in supply costs" (Document # 116604).[129] Describing the threat to the major brand system, this presentation stated:

"The retail gasoline trade based and designed its offering around these identified customer needs, and a high cost full service gasoline industry emerged and developed. High cost by nature, at both the wholesale and retail level, the major brand retailing system and its offering was vulnerable to any new form of competition based upon lower cost operation . . ..

"New competition has come from the growth of the discount brands such as XL, Spur, Martin to name a few in Ontario, and from mass merchandisers such as Eaton's, Simpsons-Sears, and Canadian Tire. These new competitors are not manufacturers and therefore they obtain their gasoline from Ontario's seven refiners. They locate in high traffic density areas seeking high volume and low unit cost. They offer a price or bonus incentive to the motorist. In order to hold costs in line with their lower prices they generally do not provide additional services, credit card facilities, product research, convenience of location, modern facilities and other extras offered

by the major brands. These new forms of competition, by reducing the customer offering, can cut their operating costs which allows them to sell at lower prices which in turn attracts more customers."

(Document # 116600, Undated, Imperial)[130]

This Imperial presentation concluded with a comparison of the economics of the two types of operations. The presentation stated:

"In fact, on a wholesale/retail system basis, the discount brands have an advantage in supply cost of only approximately 2.5 cents per gallon over the major brand wholesale/retail system. The discount brands are able to sell at substantially lower retail prices not because of significant differences in supply costs but because they are more efficient low-cost marketers at both the wholesale and retail level. For example, the Esso dealer operates on a 10.5 cent per gallon retail margin whereas the operator of a Suny's gas bar operates on a 2.0 cent per gallon retail commission. The difference in retail margins at the operator level can therefore account for up to 8.5 cents per gallon difference in the pump price. Imperial's wholesale marketing margin is approximately 8 cents per gallon whereas discount brand wholesalers work on a margin of 5 cents per gallon which can account for a further 3.0 cents per gallon in price difference. In summary, the maximum retail price differential of 14 cents per gallon on the pump is possible because the discount brand dealer can operate for 8.5 cents less than the Esso dealer, the discount brand wholesaler can operate for 3.0 cents less than Imperial, and the discount brander can get gasoline supplies at 2.5 cents less. . . .The discount branders are able to offer lower prices because they have put together a low cost customer offering which trades off price against service, convenience, credit and all the other extras identifiable with the Esso full-service offering."

(Document # 116604-5, Undated, Imperial)[131]

In summary, it is apparent that each of Gulf, Shell and Imperial recognized that their chief threat during this period came from the entry of independents to the gasoline market. Of paramount importance is the fact that the independents' advantage was admitted not to depend upon their receiving access to 'distress' product that had been dumped on the market. The independents' primary advantage lay in their lower wholesaling and marketing costs. As a result, their lower prices threatened the branded distribution network of the majors. Shell's Vice-President of Marketing summarized the threat succinctly:

"Our *greatest* tactical concern is usually identified as the growth of the discounters. In fundamental terms, however, I do not think that they are the problem, they are only the symptom. I would prefer to identify the problem as the 18 cpg. spread that is required by the major marketers to cover their costs."

(Document # 28383, July 14, 1972, Shell, emphasis added)[132]

An appreciation of these perceived cost differentials is important to an evaluation of the majors' pricing policies. For insofar as their policies were aimed at restricting or eliminating competition from this more efficient marketing segment, these policies can be classified as detrimental to competition. The

essence of predation is the use of prices to drive out a competitor who is as efficient or more efficient than the predator. The evidence presented in this section illustrates the majors conclusions as to the relative efficiency of the independent sector. Subsequent sections elaborate upon the type of pricing policies used by the majors and their intent to eliminate or discipline these efficient lower cost gasoline marketers.

G. *Entry of Independents and the Reaction of the Majors: 1958-64*

Markets, during the nineteen fifties, were charactorized by a lack of entry, 'stable' and rising prices. As was discussed earlier, the majors used 'spot' pricing to contain the small independent sector during this period. This policy was successful. Data from Shell showed that the total spread between crude cost and realized pump prices (ex tax) in Toronto during the nineteen fifties increased by some 2½ cents per gallon with the increase in dealer margin taking

TABLE 15

DEALER AND WHOLESALE MARGINS; TORONTO
1950-71; IMPERIAL OIL
(¢ per gallon)

Year	*Retail Margin (I)*	*Wholesale Plus Retail Margin (II)*
1950	6.5	
1951	6.7	
1952	7.1	
1953	7.4	
1954	7.9	
1955	7.9	
1956	7.9	
1957	8.6	
1958	8.2	
1959	6.5	
1960	6.5	10.6
1961	6.8	10.8
1962	6.8	9.9
1963	6.5	9.6
1964	6.5	9.7
1965	8.5	12.8
1966	8.5	12.9
1967	9.3	13.8
1968	8.3	12.9
1969	9.5	16.0
1970	9.5	17.1
1971	10.5	

Sources: Document # 179614 — (I) — Imperial[136]
Document # 179608 — (II) — Imperial[137]

about 1½ cents per gallon (Document # 44881).[133] Since the majors adopted similar pricing policies, it is understandable that Imperial's dealer margins followed the same upward trend (see Table 15). Between 1950 and 1957, dealer margins in Toronto increased by over 2 cents per gallon from 6.5 to 8.6 cents. As a result of what Imperial referred to as these "excessive" margins (Document # 127296),[134] the independents began to expand their market share. Private brand dealers which had accounted for only 5 per cent of the Metro Toronto market in 1956, and 7 per cent in 1960 grew to reach 11per cent in 1962 (Document # 44884).[135]

Imperial, in a 1959 study of the 'Price War in Greater Toronto', concluded that the independents were able to cut prices below the branded networks because they were able to operate on a lower retail mark-up:

> "In appraising the situation which brought about the reduced dealer margins, it must be borne in mind that the intense price cutting developed partly because unbranded gasoline vendors were able to secure supplies at below tankwagon price, partly because they combined *these low-cost supplies with large volume outlets which they could operate profitably on a retail mark-up of less than 8¢ a gallon.*"
>
> (Document # 127290, July 1959, Imperial, emphasis added)[138]

The above quotation also suggests that a second reason for the success of independents at this time was that they had been able to secure supplies at less than tankwagon prices. However, in reference to the Winnipeg market of the late nineteen fifties another Imperial document noted that it was Imperial's policy to supply several independent dealers but not to "give them any price concessions" (Document # 123216)[139] and that, as a result, most of their dealers were not antagonistic to these accounts. Again this implies both dealers and independents were being charged the same tank wagon price. The tankwagon price which the majors charged their dealer network covered brand expenses such as credit cards, capital costs of the dealer network etc. (Document # 75332).[140] Charging independents the same tankwagon price as branded dealers, therefore, would have amounted to discriminating against the independents and would confirm Imperial was able to exploit its monopoly power at the refinery level. The tankwagon price which the majors charged their dealer network covered brand expenses.

Not only did the Imperial 1959 study of the 'Price War in Greater Toronto' note that independents were capable of retailing for less than was being earned by branded dealers, but it also labelled these branded margins as "excessive". As the study noted:

> "Another essential element in intense price cutting is *excessive operating margins*, that is, too great a difference between selling price and operating costs, which constitutes an invitation to any seller to cut price. *In our opinion, the dealer margin which grew to a level of 8½¢ in Toronto had become excessive, . . .*"
>
> (Document # 127296, July 1959, Imperial, emphasis added)[141]

The entry of independents in response to these high margins threatened to change the nature of competition from one of oligopolistic non-price rivalry to one of active price competition. Referring to the period of the early nineteen sixties, Gulf noted that while independent marketers had always existed, their rapid growth in the early nineteen sixties was a new phenomenon:

> "Taking advantage of the high margins available, private brand retailers sought to win customers by posting prices well below those of the majors' outlets, offering the consumer lower price in lieu of convenience. There had, of course, always been a certain amount of private brand marketing, but the new discounters, taking advantage of the large mass markets made remarkable inroads in a very short period of time."
>
> (Document # 60123, July 21, 1971, Gulf)[142]

While there was, therefore, an increase in competitive activity in the early nineteen sixties, it remained relatively small when measured against the existing industry. In 1956, there were some 257 *unbranded* retail outlets in Canada selling 40.6 million gallons of gasoline; by 1964, the number of *unbranded* retail outlets had increased to 992 (Document # 28697).[143] Yet, the number of unbranded outlets increased from 0.7 per cent of total retail outlets in 1956 to only 2.5 per cent in 1964; unbranded retail sales increased from 2.0 to 7.1 per cent of the total retail market over the same time period (Document # 28697).[144]

The location of the unbranded activity was not evenly distributed across the country. Most of the independents were concentrated in Ontario and Quebec. Of the 992 unbranded outlets that Shell estimated to exist in Canada in 1964, 739 were located in Ontario and Quebec. The same two provinces accounted for 159 million gallons of the 204 million gallon total (Document # 28697-705).[145] Of this, Ontario accounted for 104 million gallons and Quebec for 55 million gallons. The major differences between these two provinces lay in the type of unbranded outlet and the volume per outlet. Ontario had fewer gas bars, more automotive centres, and a higher volume per outlet as Table 16 indicates.

TABLE 16

TYPES OF UNBRANDED OUTLETS, ONTARIO VERSUS QUEBEC, 1964

Province	*Gas Bars*	*Standard Service Stations*	*Auto Centres*	*Others*	*Total*	*Throughput/ Station (000 gallons)*
Ontario	92	178	36	6	312	333
Quebec	225	109	12	81	427	129

Note: Figures calculated from above-mentioned gallonage for Ontario and Quebec (104 million and 55 million, respectively), and the total number of stations.
Sources: Document # 28726, 28705, Shell[146,147]

In addition, the independents were slightly more important in Ontario — accounting for about 6.6 per cent of the market in 1960 (Document # 179672)[148] as compared to about 4.4 per cent for Quebec (see Figure 7(a) and 8).[1]

The response of the majors to entry by independents was a reduction in their branded prices to combat these companies. Table 17 indicates that the difference between jobber cost and retail prices in Toronto was kept to between 10 and 11cents per gallon between 1960 and 1964.[2] Table 19 shows that the price differential between private brands and Imperial's Esso brand, which was as high as 5 cents in parts of Ontario during the late nineteen fifties, fell to only 2 cents from 1960 to 1964. This was generally accomplished via the implementation of consignment programmes by the majors. Gulf observed that, after an initial period of price reductions in response to entry, the industry put its dealers on consignment to counter the competitive pressures emanating from the independents:

> "This action set off a flurry of counter pricing at the major companies' outlets, supported by their suppliers, and in 1961, resulting eventually in the majors themselves accepting responsibility for retail pricing by the process of placing outlets on consignment."
>
> (Document # 60123, July 21, 1971, Gulf)[152]

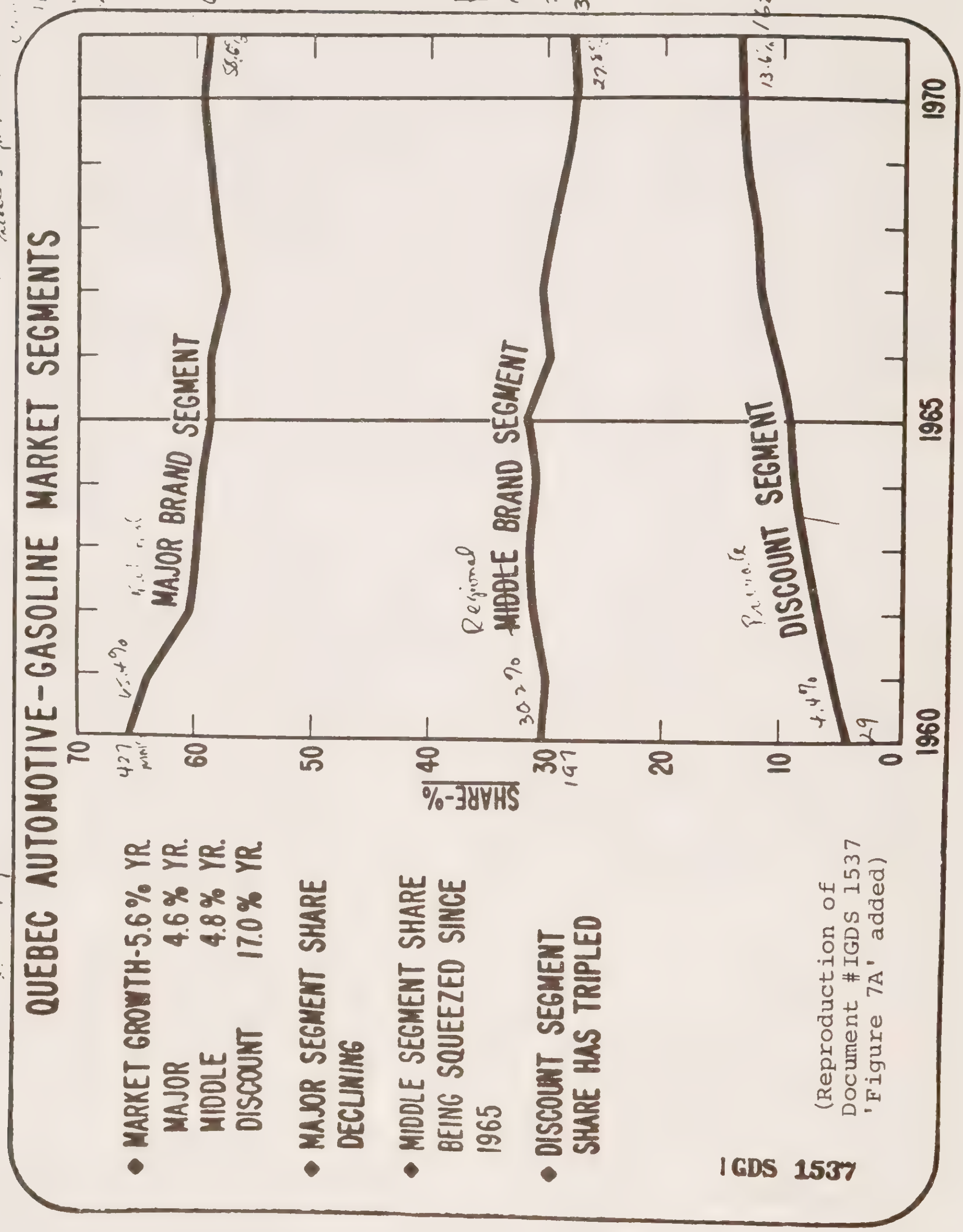
The issue that must be addressed is the extent to which this reaction can be regarded as part of the normal competitive process or as a predatory policy aimed at restoring prices. Table 17 indicates that Imperial's combined wholesale-retail margin in Toronto fell to 10.6 cents in 1960, 10.8 cents in 1961, 9.9 cents in 1962, and 9.6 cents in 1963. These figures are close to the cost figures quoted by Shell for a representative large unbranded National Company (Document # 44887),[154] but fall substantially below the 15.5 cent level required for a major brand operation (Document # 44887).[155] Margins of these magnitudes had been earned by the majors only two years before.[3] Evidence that the

1. One of the reasons for the large increase in volumes sold by independents in Ontario was the entry of Canadian Tire into gasoline marketing in 1958. By 1964, Canadian Tire possessed 25 outlets which sold a total of 31.9 million gallons. This represented approximately 30 per cent of all gasoline sold through independent outlets in that year. Canadian Tire cross-merchandised their gasoline with other merchandise, offered cash discounts or coupons at rates between 3 and 5 per cent (Document # 28729).[149]

2. Table 18 presents similar data for Ontario.

3. Table 17 indicates Imperial's margin as 10.6 cents per gallon in Toronto in 1960 but prices had fallen from 45.9 cents in 1958 to 39.9 cents (Document # 44879)[156] so that only two years before total margins would have been some 16.6 cents if crude costs are ignored. Shell indicates that the laid down cost of crude in Toronto had fallen by .65 cents over the same period (Document # 44878)[157] thereby reducing the wholesale/retail margins earned in 1958 to about 16 cents per gallon.

FIGURE 7A



(Reproduction of Document #IGDS 1537 'Figure 7A' added)

FIGURE 8

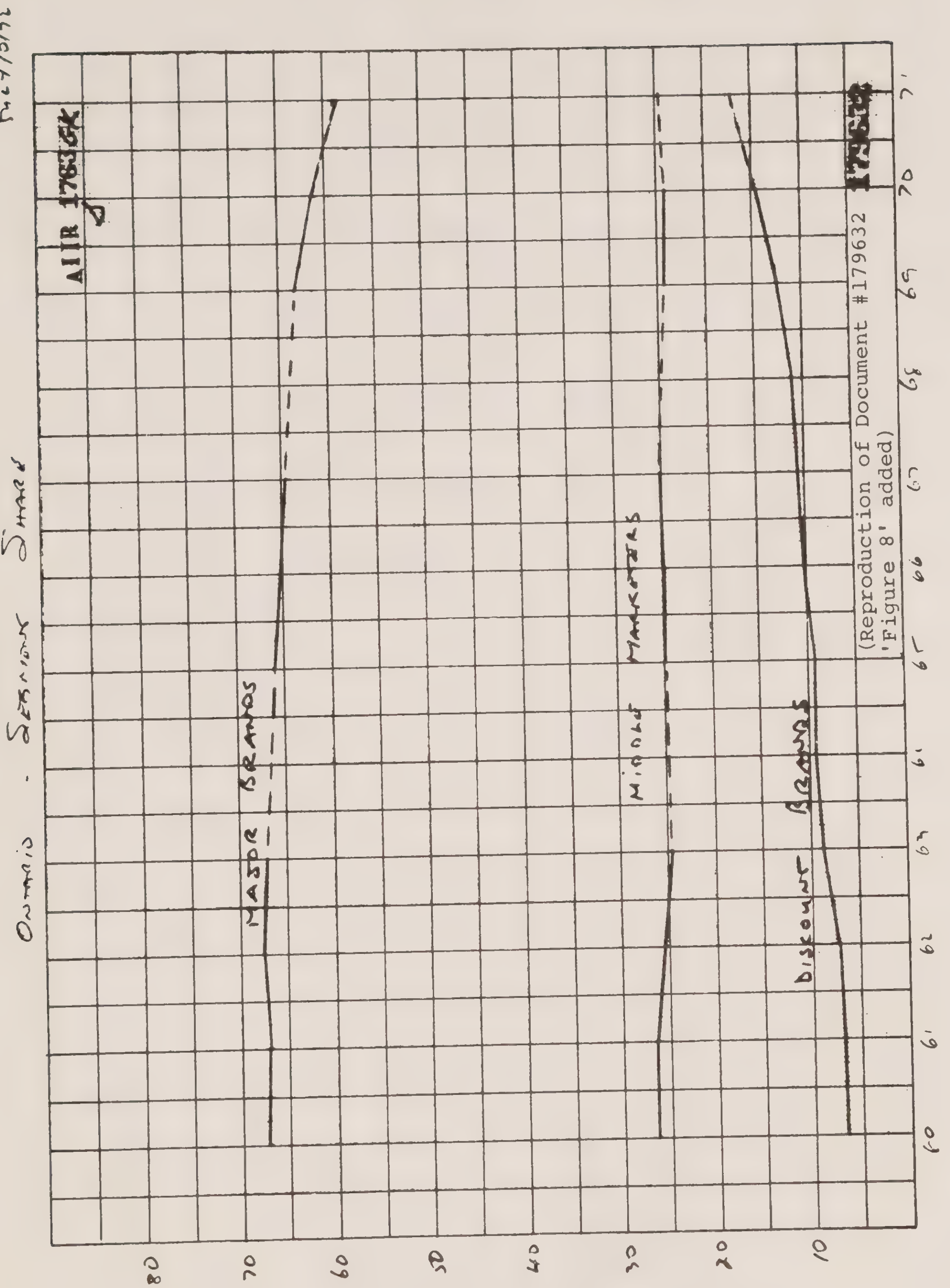

MAJOR BRANDS
MIDDLE MARKETERS
80
70
60
50
40
30
20
10
60
61
62
63
64
65
66
67
68
69
70
71
(Reproduction of Document #179632
'Figure 8' added)

TABLE 17

REGULAR GRADE GASOLINE IN TORONTO
HISTORY AND OUTLOOK
(¢/per gallon)

History OK
Forecast
[handwritten note]

	1960	1961	1962	1963	1964	1965	1966	1967	1968	1969	1970	1971	1972	1973	1974	1975	1980
Retail Price (a)	39.9	40.0	40.0	39.9	41.9	44.9	45.9	46.9	47.9	50.9	51.9	52.9	54.9	56.9	58.9	60.9	66.9
Retail Margin	6.5	6.8	6.8	6.5	6.5	8.5	8.5	9.3	8.3	9.5	9.5	10.5	10.7	11.8	12.4	13.4	16.1
Wholesale Net Expense Profit Margin	4.1	4.0	3.1	3.1	3.2	4.3	4.4	4.5	4.6	6.5	7.6	6.7	7.0	7.4	7.9	8.4	9.3
Prov. Road tax (b)	13.0	13.0	13.0	13.0	15.0	15.0	16.0	16.0	18.0	18.0	18.0	18.0	18.0	18.0	18.0	18.0	18.0
Fed. Sales Tax	1.6	1.6	1.6	1.9	1.9	1.9	1.9	2.1	2.1	2.1	2.1	2.1*	2.6	2.6	2.6	2.6	2.6
SIRV	14.7	14.6	15.5	16.4	15.3	15.2	15.1	15.0	14.9	14.8	14.7	15.6	16.6	17.1	17.5	18.5	20.9
Jobber Cost (c) (SIRV — .5¢ + F.S.T.)	15.8	15.7	16.6	16.8	16.7	16.6	16.5	16.6	16.5	16.4	16.3	17.2*	18.7	19.2	19.6	20.6	23.0
W/R (a) — (b+c)	11.1	11.3	10.4	10.1	10.2	13.3	13.4	14.3	13.4	16.5	17.6	17.7*	18.2	18.7	20.3	21.4	24.9
Posted Price — Gross	22.3	22.3	22.3	22.7	21.4			22.4	22.4								
— Net	20.4	20.2	20.2	20.4	20.4	21.4	21.4	21.6	21.6	23.4	24.4	24.4	26.2	27.1	28.0	29.5	32.8
		(.2)	—	.2	—	1.0	—	.2	—	1.8	1.0	0	1.8	.9	.9	1.5	3.3
(Memo — based upon existing FST)													2.0	1.0	1.0	2.0	
*To July 1, 1971	10.6	10.8	9.9	9.6	9.7	12.8	12.9	13.8	12.9	16.0	17.1	17.2	17.7	18.2	19.8	20.9	24.4

Source: Document # 179608, Imperial[150]

August 25, 1971

TABLE 18

ONTARIO — PRIVATE BRAND GROWTH
(¢ per gallon)

		1960	1961	1962	1963	1964	1965	1966	1967	1968	1969	1970	
Independent Var													
Retail Price ¢/G		39.9	40.0	40.0	39.9	41.9	44.9	45.9	46.9	47.9	50.9	51.9	
W/R Margin		11.1	11.3	10.4	10.1	10.2	13.3	13.4	14.3	13.4	16.5	17.6	x
Retail Price (Median)		3.0	2.5	2.0	2.0	2.0	3.5	4.0	4.0	4.5	6.5	8.0	x
Memo	High	4.0	3.0	2.0	2.0	2.0	5.0	6.0	6.0	7.0	9.0	12.0	
	Low	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	4.0	4.0	
Time													x
Dependent Var													
P.B. Market Share %		6.6	6.8	7.2	8.6	9.3	9.2	10.0	10.5	11.0	12.5	14.6	
P.B. Mkt Sh %		1.3	0.2	0.4	1.4	0.7	(0.1)	0.8	0.5	0.5	1.5	2.1	x

x Time and Factors Employed in Adopted Regression

Source: Document # 179672, Imperial [151]

TABLE 19

DIFFERENTIAL PRICE: PREVALENT ESSO
MINUS PREVALENT PRIVATE BRAND
(¢ per gallon)

Year	*Toronto*	*Central*	*Hamilton*
1957	5.0	3.0	4.0-5.0
1958	3.0-5.0	2.5-4.0	2.0-3.0
1959	4.0-5.0	4.0	3.0
1960	3.0-4.0	2.0	2.0-3.0
1961	2.0	2.0	2.0
1962	2.0	2.0	2.0
1963	2.0	2.0	2.0
1964	2.0	2.0	2.0
1965	4.0-5.0	2.0	2.0
1966	4.0-5.0	3.0-6.0	5.0-6.0
1967	4.0-5.0	4.0-6.0	5.0-6.0
1968	6.0-7.0	4.0-6.0	6.0-7.0
1969	8.0-9.0	10.0-9.0	8.0-9.0
1970	6.0-12.0	4.0	10.0-12.0

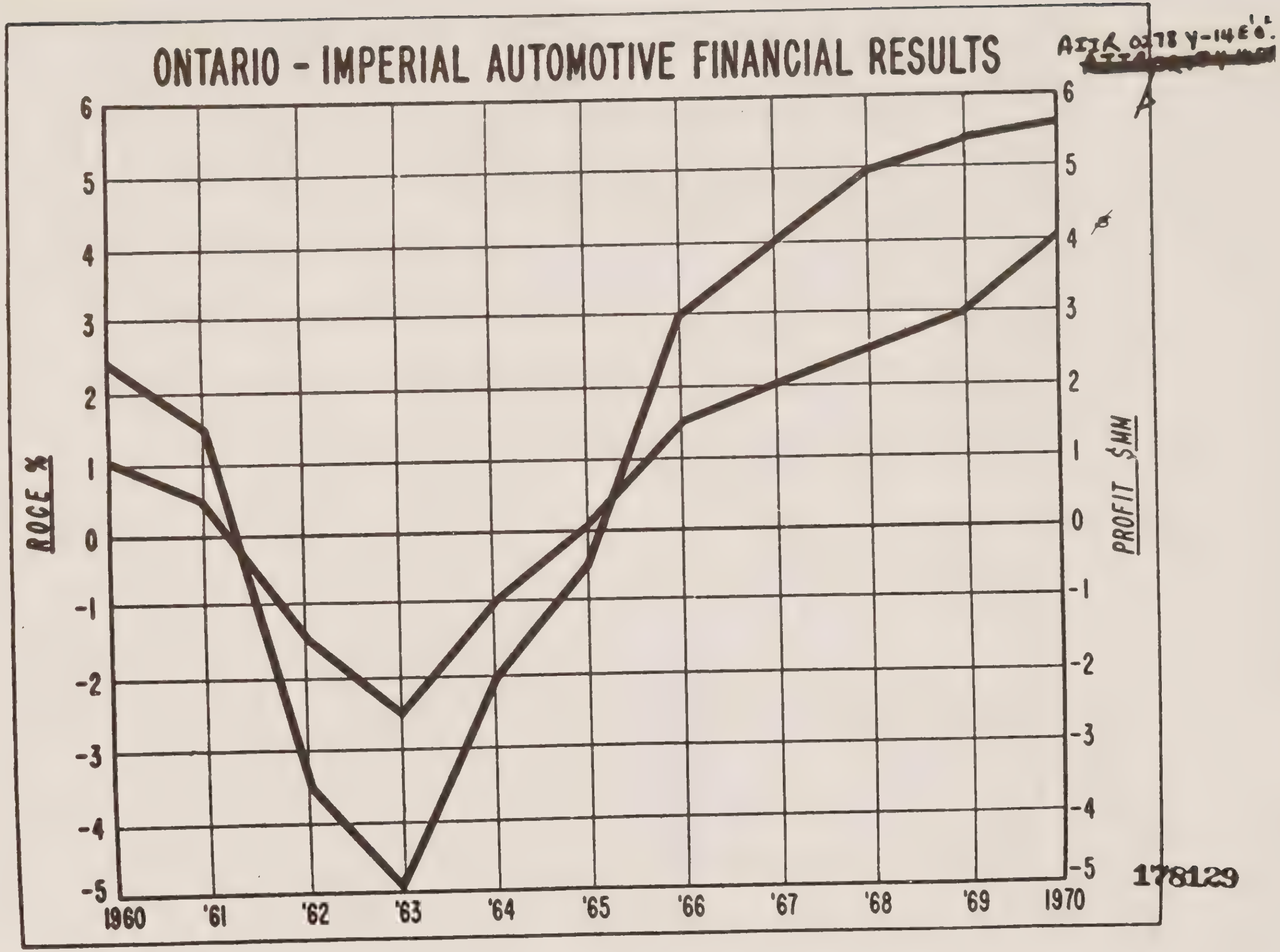
Source: Document # 179731, Imperial[153]

majors moved prices down to much less than cost levels is provided by their realized rate of return on marketing. These fell to low and even negative levels. As is evident from Figure 9, Imperial's return for Ontario was negative for the years 1962, 1963, and 1964. In Quebec, as Figure 10 indicates, the rate of return which started at 6% in 1960 steadily declined to zero by 1965.

While negative average returns such as these are suggestive of predation, they do not establish whether the majors were actually pricing at levels that did not even recoup marginal costs. However, there is evidence to suggest this was indeed the case. The Imperial figures on wholesale/retail margins presented in Tables 17 and 18, being as they are yearly averages, conceal the considerable variation that occurred in prices in those areas where independents were most prevalent. For instance, Figure 11 shows that, in the Metro Toronto area, the total differential between Shell's crude costs and its realization (G^2CD) fell from 11.9 cents in 1958 to 10.03 cents for most of 1959 and 1960, but for two short periods to as low as 7 cents and 4 cents during 1959. In 1962 and 1963, it was held for a long period at levels below 10 cents per gallon reaching a trough of about 6 cents per gallon for about a quarter of a year. It should be remembered that this was the total amount available to Shell to cover all of its refining and marketing costs. Shell indicated that the marginal cost of 'pooled' motor gasoline[1] in the Ontario region was 10.5 cents per gallon

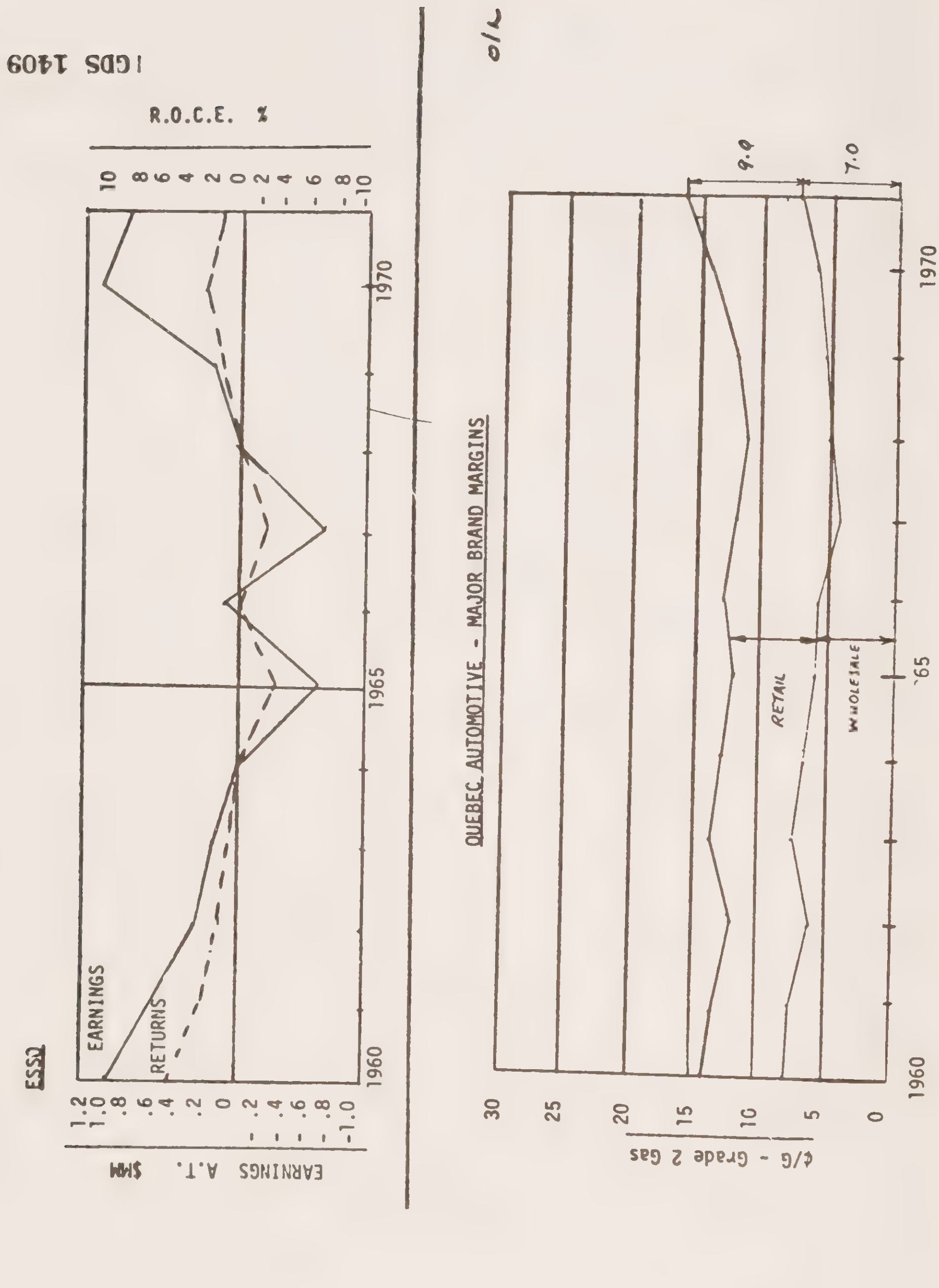
1. 'Pooled' refers to all types.

FIGURE 9



(Reproduction of Document #178129
'Figure 9' added)

FIGURE 10



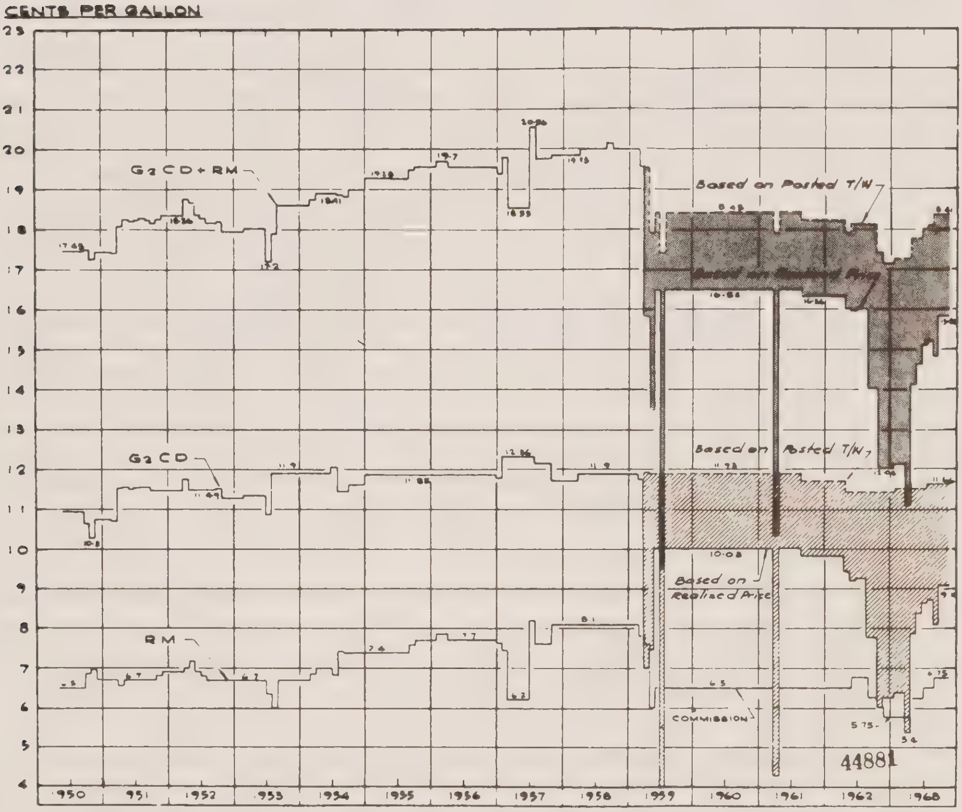
(Reproduction of Document #IGDS 1409 'Figure 10' added)

FIGURE 11

ACJ023640 I

METRO TORONTO PRICE STUDY CHART 4

MARKETING MARGINS – REGULAR GRADE GASOLINE – METRO TORONTO
RETAILERS MARGIN – R.M & COMMISSION
GROSS GASOLINE – CRUDE DIFFERENTIAL – G2 CD
GROSS GASOLINE – CRUDE DIFFERENTIAL PLUS RETAILERS MARGINS – G2 CD + R.M.



(Reproduction of Document #44881
'Figure 11' added)

(Document # 44874)[158] at this time. Therefore, in late 1962 and early 1963 for almost a full year, Shell was not recovering the marginal costs of its refined product and, of course, it was making no contribution whatsoever to its marketing costs.

The effect of these pricing policies is shown in the following Shell quotation which indicates that the majors were finally able to curb the growth of the independents by "excessive" price cuts:

> "In 1959, unbranded growth increased markedly with a sizeable gain in average annual throughput per outlet. This was attributed to wide discounts. A price war resulted with consequent re-adjustment in prices from the 'posted' to the 'realized' level. *This high rate of growth continued through to 1963 until curtailed by excessive price cuts.*"
>
> (Document # 44874, January 31, 1964, Shell, emphasis added)[159]

While price, cost and profitability data from Shell and Imperial suggest predation, it is Texaco which provides a clear statement of intent. Texaco's perceptions of the market corroborate the view that the dynamic force that created price competition emanated from the independent sector. In a study of the conditions of the late nineteen fifties and early nineteen sixties, Texaco noted that discounters had begun to grow quite rapidly and had "caused serious problems in maintaining prices at a level adequate for a major oil company lessee to earn an adequate return..." (Document # 57440).[160] The resulting price wars had caused "corporate earnings" to be "seriously reduced" (Document # 57440).[161] In addition, Texaco provided observations on the predatory or disciplinary nature of the various marketing instruments that were implemented. A 1962 document noted that the majors' response was to move prices downwards in order to 'discipline' the independents:

> "*Remedial Policy, Mechanics of Pricing*
>
> The most recent remedial policy vis-a-vis the mechanics of pricing undertaken by the leading companies in the petroleum industry has been the move to meet the price of unbranded jobbers. *The method of achieving price stability appears to be that of 'discipling' [sic] unbranded jobbers to maintain retail prices at a level which will yield a reason-able return at the service station level.*"
>
> (Document # 57439, November 22, 1962, Texaco, emphasis added)[162]

This statement indicates that the intent of the majors' price decrease was not to adopt a new more efficient marketing scheme. Instead it was aimed at protecting their existing branded network and the higher prices that this network needed in order to cover its costs. That it was the intention of the majors to force prices upwards is echoed by the following statement taken from the same Texaco document:

> "This move to lower prices by the majors, which was initiated by a principal company in the large markets of Toronto and Montreal in September and October of this year, is causing serious revenue problems for all major oil companies in these markets.

"*The stand taken by this principal company appears to be a move towards lower prices in order to force unbranded jobbers to raise their prices to equal that of branded outlets*. Under these circumstances, competition would be on the basis of location, service, brand name, etc., with the result that unbranded jobbers would not be able to continue to cut into branded sales to the extent that they did when the jobber was competing on the basis of price only."

(Document # 57439, November 22, 1962,[1] Texaco, emphasis added)[163]

Texaco, therefore, indicated that the policy of the majors was to use price as a weapon in order to prevent the independents from reflecting their lower costs in lower prices. As long as entrants to marketing were willing to use the high cost non-price competition adopted by the majors they were tolerated. When they attempted to adopt new lower cost marketing methods and price in relation to their costs, the majors lowered prices with the intent of forcing the independents' prices upwards.

The practice of consignment was used by most of the majors as Texaco, in 1962, noted:

"In most major cities today, the practice is for the majority of the major marketing companies to sell gasoline to their dealers on a consignment basis."

(Document # 57439, November 22, 1962, Texaco)[164]

Since consignment was the marketing practice utilized at this time, characteristics of the practice as employed by two companies — Gulf and Imperial — yield further evidence on the predatory or disciplinary intent of these companies.

Gulf, like the other majors, recognized that the collapse of the branded price structure was the result of independents "taking advantage of the high margins available" and "offering the consumer lower prices in lieu of convenience" (Document # 60123).[165] Consignment was generally introduced by the majors as a response to this price competition (Document # 60123).[166] Gulf, like the other majors, introduced consignment selectively in order to aid those of its dealers who faced price competition — by lowering their prices to the extent that Gulf characterized them as being "below economic levels":

"The consignment plan was originally introduced to provide a formula which *would permit us to assist the Dealer Trade in meeting price competition in areas where retail gasoline prices were continuing at below economic levels*. Dealers found in these circumstances that they could not realize adequate margins between their cost of product and their resale price. To alleviate the problem we introduced the gasoline consignment plan under which the gasoline remained the property of the Company and was sold at prices fixed by the Company by the Dealers as commission agents."

(Document # 71815, August 20, 1965, Gulf, emphasis added)[167]

---

1. This memorandum was found in the office of J.I. Mingay, at the time of search the President and Chief Executive Officer of Texaco.

The retail prices that Gulf met were "below economic levels" for its dealers not because of a temporary over-supply of product or irrational loss-leader selling by independents but, as Gulf's own documents acknowledged, because retail/wholesale margins had been excessive, and non-price competition had raised the majors' costs to these high levels. It is, therefore, significant that Gulf's subsidy policy was not aimed at reducing permanently its own wholesale/retail margins — margins that in Gulf's own words were "fat" (Document # 69570)[168] and "comfortable" (Document # 60122).[169] Gulf noted that its policy was neither meant to enhance price competition nor was it to be used to initiate a different price structure with lower prices generally. Subsidies were only to be used to meet lower prices posted by others:

> "Present company policy on dealer subsidies is to grant temporary competitive allowances to allow a dealer to remain competitive and retain present volume of business. *It is not company policy to lead in the downward revision of prices.*"
>
> (Document # 72574, Undated, Gulf, emphasis added)[170]

Implicit in the above is the notion that Gulf intended its subsidy policies to be only temporary. Its actions bear this out. For when retail prices improved in the mid-nineteen sixties, consignment was removed. For instance, by 1965, prices began to firm and Gulf considered the removal of consignment:

> "In certain areas market conditions may have improved and the use of the consignment plan may no longer be necessary."
>
> (Document # 71815, August 20, 1965, Gulf)[171]

A policy document, dated 1965, indicated that Gulf intended, at this time, to continue to apply consignment programmes but only on a selective basis. It was Gulf's policy to discontinue consignment and to let pump prices return to their high levels wherever "depressed pump prices" were *not* "a continuing factor" (Document # 71815).[172] In addition, the discontinuance of consignment was to be done in a way that would have contributed to market strengthening. Dealers, when they saw prices go up to the maximum set by the consignment commission schedule, were to be told that the only way they could further increase their margins was to cease participation in the programme.

Finally, it should be pointed out that Gulf's formal subsidy policy implemented against the independants during this period, remained company policy in 1972. In 1972, the company noted that it had been following this procedure for over a decade:

> "Our current written policy, number 1020, was composed in January, 1961."
>
> (Document # 69421, April 11, 1972, Gulf)[173]

> "Company Policy No. 1020 dated January 1961 states that temporary competitive allowances will be granted to dealers to allow them to remain competitive and to retain present volume of business."
>
> (Document # 69425, April 10, 1972, Gulf)[174]

In addition to the length of time of use, it is also clear that Gulf's subsidy policy was not confined to a single geographic area. The policy was implemented in numerous centres of independent activity.

In summary, the evidence indicates that the major branded networks could not compete freely with the independents on a price basis unless the majors deliberately incurred losses. The extensive number of low volume major brand service stations built during the nineteen fifties and early nineteen sixties required 'fat' dealer-wholesale marketing margins in order to survive. Gulf recognized that because of this its own stations were "not able to compete if margins were lowered" and implemented a consignment programme in those areas "where retail gasoline prices were continuing at below economic levels" (Document # 71815).[175] Gulf's perception of the inefficiency of its own marketing network indicates that it fully comprehended the fact that it could only meet the independents' prices by pricing at 'uneconomic' levels. In addition, the fact that the reduction in prices via a subsidy programme was envisaged as only a temporary instrument — even in the face of the acknowledged superiority of independents' costs — is implicit evidence of predatory intent. Finally, branded prices were to be kept high in those markets not affected by price competition or were to be raised in price depressed markets as soon as the situation improved. Therefore, Gulf's subsidy policy was used to implement systematic price discrimination among retail markets and among its own dealers in order to maintain prices at high levels in areas where entry had not yet occurred.

As was outlined in the first section of the marketing volume, distinguishing between predation and legitimate price competition is not an easy task. Apart from the fact that both involve downward movements in price, one of the reasons for the difficulty is the wide variety of evidence that different authorities have suggested is required to prove the existence of predation. There are those who stress the notion that predation must involve pricing below cost. Others stress that intent to raise prices should form the basis for the offence. Still others would focus upon effect. Then there is the argument that even without cost, or price data, or explicit intent, the actual mechanics of the reaction serves to provide sufficient evidence from which to infer the practice. Yamey's example of the Mogul 'fighting' ship which was sent out to follow another ship — a ship that would not adopt the cartel's pricing rules — best exemplifies the latter argument.

This section has not attempted to adjudicate among these positions. Rather it has taken the position that if evidence on all these matters can be adduced, the matter of predation will be that much more easily decided. The Shell documents indicate that the majors priced for a considerable period of time below marginal cost. Texaco documents provide evidence as to one major's understanding of predatory intent. While stemming from only one company, its impact is bolstered by similar evidence on intent that comes from Imperial

documents on the pricing policy followed by the majors in the late nineteen fifties. Gulf's documents relate as well to intent — though in a different fashion. Gulf's documents illustrate that it introduced a subsidy programme against a competitor that it acknowledged as *more efficient*. It did so in order to lower prices *temporarily* so as to counter the competitor's lower prices. It is clear, therefore, that Gulf expected to be able to force the prices of the independents upwards from the levels that were fully justified by their costs. Imperial's documents confirm many of the same points that were established by Gulf's behaviour. Imperial's consignment programmes were collectively aimed at independents which Imperial too recognized as having superior efficiency. Its subsidy programmes were also selective. They were temporary and, therefore, were meant to counter price competition and were not designed to permit Imperial to implement new retailing techniques that the independents had proven could be successful. But the Imperial documents on this period also provide something that the Gulf documents do not. Imperial documents contain a description of the actual mechanism of price movements that Imperial utilized to force prices upwards. It is this mechanism which substantiates the intent referred to by Texaco and inferred from the characteristics of Gulf's policies.

Imperial, as early as 1959, recognized that one of the reasons independents had entered the market was the excessive margins that major brand marketers had been obtaining. For instance, Imperial had commented in 1959 that "another essential element in intense price cutting is excessive operating margins, that is, too great a difference between selling price and operating costs" (Document # 127296).[176] Imperial reacted to the unbranded sector by implementing consignment in such a way that it is clear its intent was to raise the price of the independent marketer.

Imperial's strategy was to lower prices to within 1-2 cents per gallon of the independents generally; but in particular pockets of independent activity it sometimes matched the unbrandeds. For instance, the following description of competition in Quebec was written in January 1963:

> "*Montreal*
>
> Imperial and other majors are generally at 37.9. Our stations adjacent to Sanguinet, Go and Spur *match* these Private Branders with prices of 35.9.
>
> "*Quebec City*
>
> 38.9 is still the price posted by most major outlets, including Imperial. Robitaille remains low at 33.9 and is *matched* by our nearest stations."
>
> (Document # 123503, January 17, 1963, Imperial, emphasis added)[177]

The pricing posture by Imperial in Ontario was described as being much the same. The following quotations outline Imperial's policies of early January 1963 in Ontario:

"*Toronto*

Most major outlets remain at 35.9. 57 Imperial stations post 34.9 and 118 post 35.9 accounting for 175 of our 210 dealers in this area. C.T.C. remains low at 33.9 less 10% (30.5). *Our 7 adjacent stations compete with prices of 33.9 less 5% (32.2.) Our lowest price is 31.9 matching Visco at Don Mills and Steeles.*

. . .

"*Chatham*

All major outlets including 8 of Imperial's 9 are at 35.9. The few 37.9 and 39.9 prices reported one week ago have disappeared.

Maple City continues to offer 5% off 35.9 (34.1). Our ninth station posts 35.9 less 5% (34.1) against Maple City.

"*Kingston*

Most major outlets are at two levels; 23 post 32.9 and 33 post 33.9, 8 Imperial stations being included at 33.9.

Our other dealer is at 32.9 less 5% (31.3) against C.T.C., who lowered from 33.9 less 10% (30.5) to 32.9 less 10% (29.6).

"*Kitchener*

Majors continue generally at 33.9 including 15 Imperial stations.

Our other 2 dealers remain at 33.9 less 5% (32.2) against C.T.C. at 33.9 less 5% (32.2) and Towers at 35.9 less 10% (32.3).

"*Ottawa*

The majority of competition still posts 37.9 including 38 of 41 Imperial outlets.

Our other 3 are at 35.9 to match 1 G.E.M. and 2 Koffman outlets."

(Document # 123503-5, January 17, 1963, Imperial, emphasis added)[178]

Imperial's policy amounted to more than just a meeting of competition. Its conduct indicates it was attempting to influence prices upwards. To do so, Imperial adopted the policy of immediately meeting any attempt by the lower cost unbrandeds to establish a differential between themselves and the majors — even though a differential would have been justified on the basis of relative costs. One example is provided by a description of Imperial's conduct in the Rimouski-Mont Joli markets:

"Two days ago we lowered 11 stations 2 cents per gallon in the Rimouski-Mont Joli area to meet the 38.9 price posted by 3 Private Branders. The only one of these to react so far is a Go gas bar in Mont Joli who dropped another 2 cents to 36.9 late yesterday. We retaliated immediately by lowering our 2 closest stations to 36.9 in an effort to make it evident that such a Private Brand price reduction will be met by Imperial."

(Document # 123503, January 17, 1963, Imperial)[179]

At the same time, Imperial used its control over prices to indicate to the independents that Imperial would encourage prices to move upwards. An Imperial document describes how this was done in the Montreal market in 1963:

> "Two days ago, on the west side of Pie IX Blvd. at 37th Street, a Canadian Petroleum outlet (B.A.) dropped from 37.9 to 35.9. The next morning, our station 5 blocks to the north was lowered to 35.9, then raised today back to 37.9. We are hesitant to remain low here because we are across from several other private branders. *At this stage, we are trying to indicate to them that we will follow downward moves and at the same time we want Canadian Petroleum to move back up to prevent a large scale price war.*"
>
> (Document # 123506, January 31, 1963, Imperial)[180]

Imperial encouraged upward price movements by matching any increases that might be implemented by an independent after it had felt the effects of branded price pressure. For instance, Imperial commented:

> "*Montreal*
>
> The prevailing price for most majors including Imperial remains at 37.9.
>
> Last Friday, a Go gas bar in Dorion raised from 35.9 to 37.9. *We followed immediately* . . .."
>
> (Document # 123506, January 31, 1963, Imperial, emphasis added)[181]

Imperial also devised a special strategy to combat the 'mass merchandiser' independent — such as Canadian Tire. The 'mass merchandiser' tended to retail gasoline at a discount often with the use of coupons. It became difficult for Imperial to counteract this without adopting similar schemes — an action which was probably administratively cumbersome and difficult without a cross-merchandising system. As a response, Imperial developed what it referred to as the "one-over-one pricing technique." Its implementation was described in the following document:

> "Following our discussions today, I have conversed with R.G. McKenzie, Don Mills, and he is instituting, immediately, a pricing policy throughout Ontario, *exclusive* of the Metropolitan Toronto area, which will follow the one-over-one pricing technique based on the *net* price of significant private branders.
>
> "*If in local markets different significant private branders have different net prices, the one-over-one practice will, where possible, be maintained so that in effect we could have different levels of prices in urban areas. If no different price levels are feasible, the practice will be followed of meeting the lowest significant net price on a one-over-one basis.*
>
> "The one-over-one basis will be introduced by posting 2¢ over the net price on the pump for credit card customers and signs will indicate a 1¢ discount for cash or a net price 1¢ above the net competitive private brand price."
>
> (Document # 123510, February 6, 1963, Imperial, emphasis added in 2nd paragraph)[182]

With the implementation of the one-over-one pricing policy, Imperial priced 2 cents above the net price of the merchandiser but gave a 1 cent discount for cash. In effect, Imperial was recognizing its credit costs of about 1 cent per gallon. On the other hand, this policy also meant that the remaining value of the brand was only being placed at about 1 cent per gallon — an extremely aggressive policy in light of the higher costs of the majors' brand. This policy brought Imperial's branded prices to within 1 cent of the 'mass merchandiser' on a selective basis. Imperial saw its implementation of the policy as permitting it to establish, where possible, different prices against different 'mass merchandisers' in the same urban area. Finally, when the nature of the urban area prevented this, Imperial intended to meet the "lowest significant net price." As such it would have undercut any higher priced merchandisers.

The effect of Imperial's aggressive policy was to reduce the volumes of the independents. For instance, in discussing the specific market of St. Catharines, Imperial noted that a major independent had closed:

> "*St. Catharines*
>
> Majors including Imperial all post 31.9.
>
> . . .
>
> "It is interesting to note that 3 Sauder Bros. outlets have closed recently, and were all pricing at 31.9."
>
> (Document # 123505, January 17, 1963, Imperial)[183]

Another Imperial study, in mid-February 1963, indicated that its policy of matching independents' prices had successfully drawn volume away from this class of marketers:

> "We have attached to today's review a report showing the effect of our price action on volumes at several representative stations competing directly with private branders and mass merchandisers in Quebec and Ontario.
>
> "These are selected outlets and cannot give us a true picture of the effect of our program on any one complete market area as in some cases our substantial volume increases have been gained from other majors and Esso stations in the area as well as from the adjacent competitor.
>
> "However, the figures indicate in most cases that our price action has certainly had an impact considering that these are but a few of the outlets involved in the various markets."
>
> (Document # 123511, February 19, 1963, Imperial)[184]

After a period of aggressive pricing, Imperial in April of 1963 led a general price increase. The events in various metropolitan markets in Ontario were described by Imperial:

> "*Hamilton*
>
> On April 4, Imperial moved from 31.9 to 35.9 and most majors followed.

. . .

"*Aurora*

On April 4, Imperial raised from 32.9 to 35.9 followed by most majors. C.T.C. raised to 35.9 less 5%. (34.1)

. . .

"*Barrie*

On March 29 we raised our four stations from 30.9 to 37.9. Majors followed, and C.T.C. moved to 37.9 less 5% (36.0).

. . .

"*Chatham*

On April lst our prices here were raised from 35.9 to 37.9. Majors followed to the level and the private brands post —

Atlas 36.9
Kent Pet. 36.9
Maple City 36.9 less 5%

. . .

"*Kingston*

On April 4th we raised from 30.9 to 37.9, followed by other majors. C.T.C. posts 37.9 less 5% (36.0)."

(Document # 123516-7, April 9, 1963, Imperial)[185]

In summary, Imperial Oil used its consignment programme during this period to lower its branded prices to match the unbrandeds or to give them no more than a 2 cent per gallon margin. In the process, retail prices were driven down to levels that squeezed the margins of the independents. For instance, Imperial noted that in 1963, the average unbranded margin in Toronto with a retail price of 39.9 cents per gallon was 10.1 cents per gallon. Yet the retail price quoted above for Hamilton, just before Imperial led a price restoration, was 31.9 cents per gallon. This meant the unbranded would have been left with only about 2 cents per gallon margin. At the same time that margins were squeezed, Imperial's policy of meeting the unbranded, even though it spent substantially more per gallon on brand image and capital, tended to draw off volume from the independents. This, in turn, would have increased the independents' costs when calculated on a per gallon basis because of the volume economies inherent in gasoline retailing. After a period of time, Imperial led a price restoration just as it had in the late nineteen fifties.

Illustrative of the effect of the major's disciplinary pricing policies is the actual course of retail/wholesale margins during the nineteen sixties. The majors were ultimately able to increase these margins in the mid-nineteen sixties. As they did so, they abandoned their subsidy policies. Gulf's behaviour in this regard has already been cited. Imperial behaved in a similar fashion as an excerpt from a 1967 document indicates:

"Over the past two years, Imperial Oil has moved away from consignment as a dealer gasoline marketing method and towards methods which give the dealer greater control over the type of operation he runs and the actual prices he charges at the pump. Only in southern British Columbia and in the Montreal East-Quebec City belt are appreciable numbers of dealers still on consignment."

(Document # 119182, March 1, 1967, Imperial)[186]

In light of the objectives of the subsidy policy outlined above, the evidence as to the course of wholesale/retail margins in the subsequent period is an important gauge of the effect of the disciplinary pricing practices that were employed by the majors in the early nineteen sixties. To the extent that the majors moved marketing margins back to their previous 'excessive' levels, then the argument that their subsidy policies merely permitted the majors to adapt to the more price-conscious segment of the market is refuted.

Before the evidence on the majors' margins in the late nineteen sixties is presented, it is useful to recall the evidence on the level of margins in 1958 and 1959. Imperial Oil felt that the margins during 1958-59 in Toronto were 'excessive'. Gulf referred to the same period as producing 'fat' margins. An indication of the level of 'fat' margins being earned at this time is given in Table 20 that presents Gulf retail and wholesale margins for various metropolitan areas. Except for Halifax, where dealer margins were regulated, Gulf's combined wholesale/retail margins per gallon ranged from 14 cents upwards to 18 cents in 1958. Table 20 shows that these margins were reduced in the early nineteen sixties — though to varying degrees by city — but had again increased to 1958 levels by the year 1968. The combined margins in Montreal went from 10.0 cents in 1963 to 15.9 cents in 1967; in Toronto, from 7.3 cents in 1963 to 16.5 cents in 1967; in Calgary, from 13.2 cents in 1963 to 16.8 cents in 1967; and in Vancouver, from 9.9 in 1963 to 15.1 cents in 1967. In other words, the margins that the oil companies recognized as being 'excessive' in 1960 were once more being achieved, if not exceeded, by 1967.[1]

An alternative way to gauge the deleterious effect that the majors' policies had upon market performance is to recall the majors' own evaluations of the costs of efficient independent marketers — the firms which were disciplined by the majors' pricing actions in the early nineteen sixties. Imperial Oil estimated unbranded retail costs at 5 to 7½ cents per gallon in Quebec City (Document # 90990).[188] At the same time, "efficient" wholesalers' costs (plus return) were put at 3½ to 4 cents per gallon (Document # 90990).[189] This would have placed independent distribution costs at between 8½ and 11½ cents per

1. The two Shell studies of unbranded cost levels, referred to earlier, found no tendency for increases in this sector's cost per gallon during the nineteen sixties. Thus margins in the late nineteen sixties are appropriately compared to those of the early nineteen sixties even though consumer prices appreciated during this period.

TABLE 20

THE COMBINED WHOLESALE AND RETAIL MARGINS BY SELECTED CITY FOR GULF, 1958 TO 1968
(¢ per gallon)

Year	*Halifax*	*Montreal*	*Toronto*	*Winnipeg*	*Calgary*	*Vancouver*
1958	11.2	15.8	14.4		16.6	15.1
1959	12.2	18.4	16.2		16.5	15.9
1960	13.4	13.0	12.2		16.7	12.4
1961	13.6	13.1	12.3		16.1	12.4
1962	12.7	12.2	12.0		15.2	9.8
1963	12.5	10.0	7.3		13.2	9.9
1964	16.2	11.2	11.7	11.5	13.2	9.1
1965	15.2	12.0	11.8	11.0	12.7	12.0
1966	15.1	14.1	14.6	12.3	14.8	13.4
1967	16.7	15.9	16.5	13.7	16.3	15.1
1968	15.9	13.8	15.9	14.1	17.0	15.4

Source: Document # 74557-8, Gulf[187]

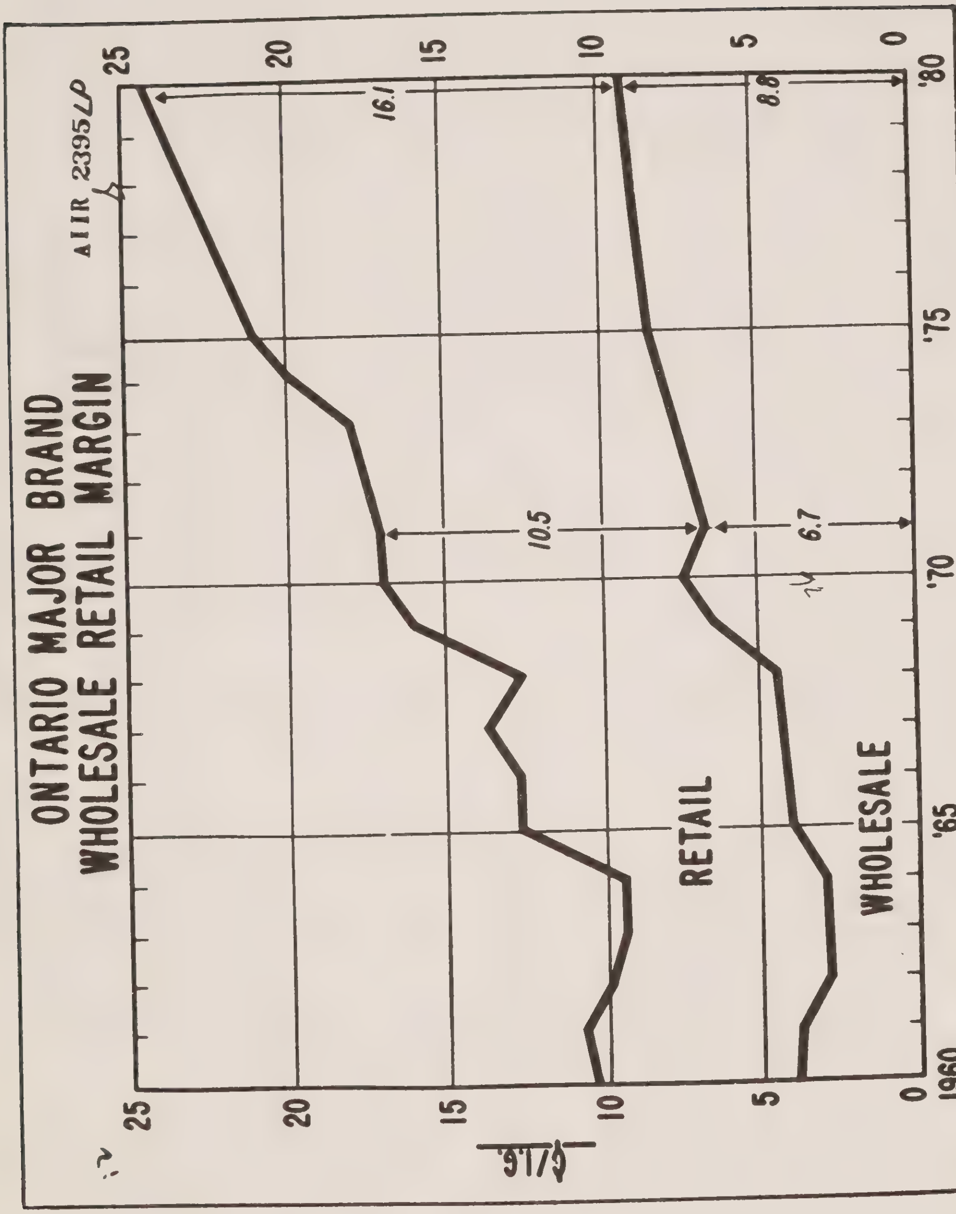
gallon. The Shell estimates of unbranded costs at about the same time were some 9 cents per gallon (Documents # 30765, 30778).[190, 191] These were the levels to which the majors reduced their *average* margins for a short period of time — though for periods they fell below this.

It is important to recognize that these were levels that at least one of the majors felt were possible to achieve. The following statement, taken from a British Petroleum (B.P.) document, indicates that 12 cents per gallon was considered to be an appropriate figure for a branded station. It is taken from a July 1970 document entitled 'B.P. Gasoline Marketing Philosophy', and indicates that the margins of 16 to 18 cents per gallon in existence at the time were recognized as being "too high". The figure of 12 cents per gallon is mentioned as more reasonable:

> ". . . there is currently about 16 to 18 c.p.g. between refinery gate wholesale prices and the consumer where list prices prevail. *This is too high*; gasoline can be distributed at about 12 cents if outlets have sufficient volume."
>
> (Document # 9635, July 30, 1970, B.P. emphasis added)[192]

By 1964, the majors had pushed the total wholesale and retail margins for major brands in Ontario above this level. While the previous evidence on this point comes from Gulf, Imperial also indicates the generality of this phenomenon in the Ontario market. Figure 12 shows what is entitled "Ontario Major Brand Wholesale Retail Margin." Starting from a range of around 10 cents per gallon in 1960, these margins moved up sharply in 1965 and then again in 1968. By 1969-70, they were above 15 cents per gallon. Figure 12 also shows that the increase in 1965 occurred primarily in retail margins. But by 1968, the majors

FIGURE 12



180269

(Reproduction of Document #180269
'Figure 12' added)

were pushing up both wholesale and retail margins. In 1971, the dealer margin had reached 10.5 cents per gallon — a level well above that which the majors had recognized as being 'excessive' in 1960. Wholesale margins had reached 6.7 cents per gallon compared to 3½ to 4 cents per gallon recognized in an Imperial study as "an efficient wholesaler's costs plus return" (Document # 90990).[193]

Not surprisingly, the results Imperial reported for Toronto are very similar to those for Ontario. Table 18 presented Imperial's margins — both retail and retail/wholesale combined. This table showed that retail margins increased from 6.5 cents in 1960 to 9.5 cents in 1970, and wholesale margins from 4.1 to 7.6 cents over the same period.

This data shows how important it is to distinguish between the short and long run effects of the pricing practices employed by the petroleum industry. The subsidization of retail facilities through the use of consignment and allowances contributed to intensive short run price rivalry in many metropolitan markets in the 1960-64 period. But there is little doubt that these policies, given the evidence presented, were aimed at disciplining the independents. The price reductions were temporary; they were such as to leave prices below marginal variable costs; they were meant to enhance the general price level; they were employed to do so and they had this effect. Exclusionary monopolistic practices were used to protect the majors inefficient, high cost distribution system and were, therefore, inimical to the public interest.

H. *The Re-establishment of High Margins and the Common Use of Monopolistic Practices: 1965-73*

1. *Introduction*

In the latter half of the nineteen sixties, the majors returned to the oligopolistic equilibrium that they had established in the late nineteen fifties. High margins once more emerged and non-price competition was adopted as the prevailing form of marketing activity. As Texaco noted:

> "In 1963 the industry settled down as everyone realised almost simultaneously the futility of using price as a motivator. The balance of the sixties was characterized by the emergence of aggressive promotional activity in lieu of discounts."
>
> (Document # 56980, Undated, Texaco)[194]

The Shell Retail Task Force (1973) commented similarly that, at least up until the late nineteen sixties, price competition was relatively unimportant:

> "As recently as five years ago the retail market could be considered an orderly market from a marketer's viewpoint.
>
> The main market characteristics were:
>
> 1) Uniform facilities — outlets generally had service bays and vied for business through conventional appeals such as location, service, promotions, etc.

FIGURE 13

6 | ONT. - AUTO. STRATEGY

AIIR 2099AB

ONTARIO - MAJOR BRAND MARGINS

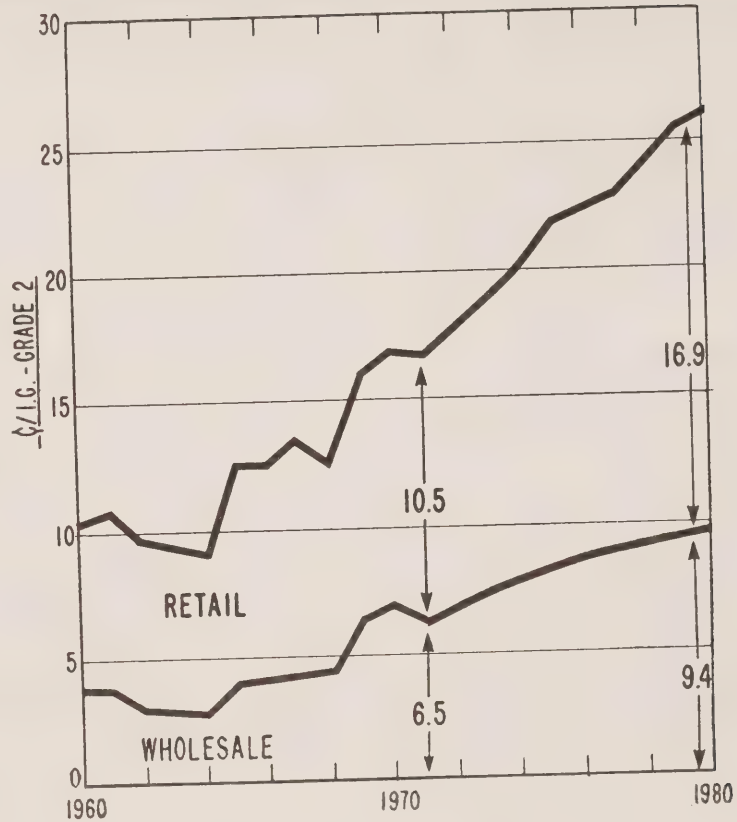
1960-'64
NARROW MARGINS CAUSED SEVERE PROFIT DROP

1965-'68
RETURN STILL LOW

1969-'71
BETTER PROFIT RESULTS

1972-'80 PRESENT SYSTEM
WHOLESALE INCLUDES EFFICIENCIES IN LONG TERM PLAN

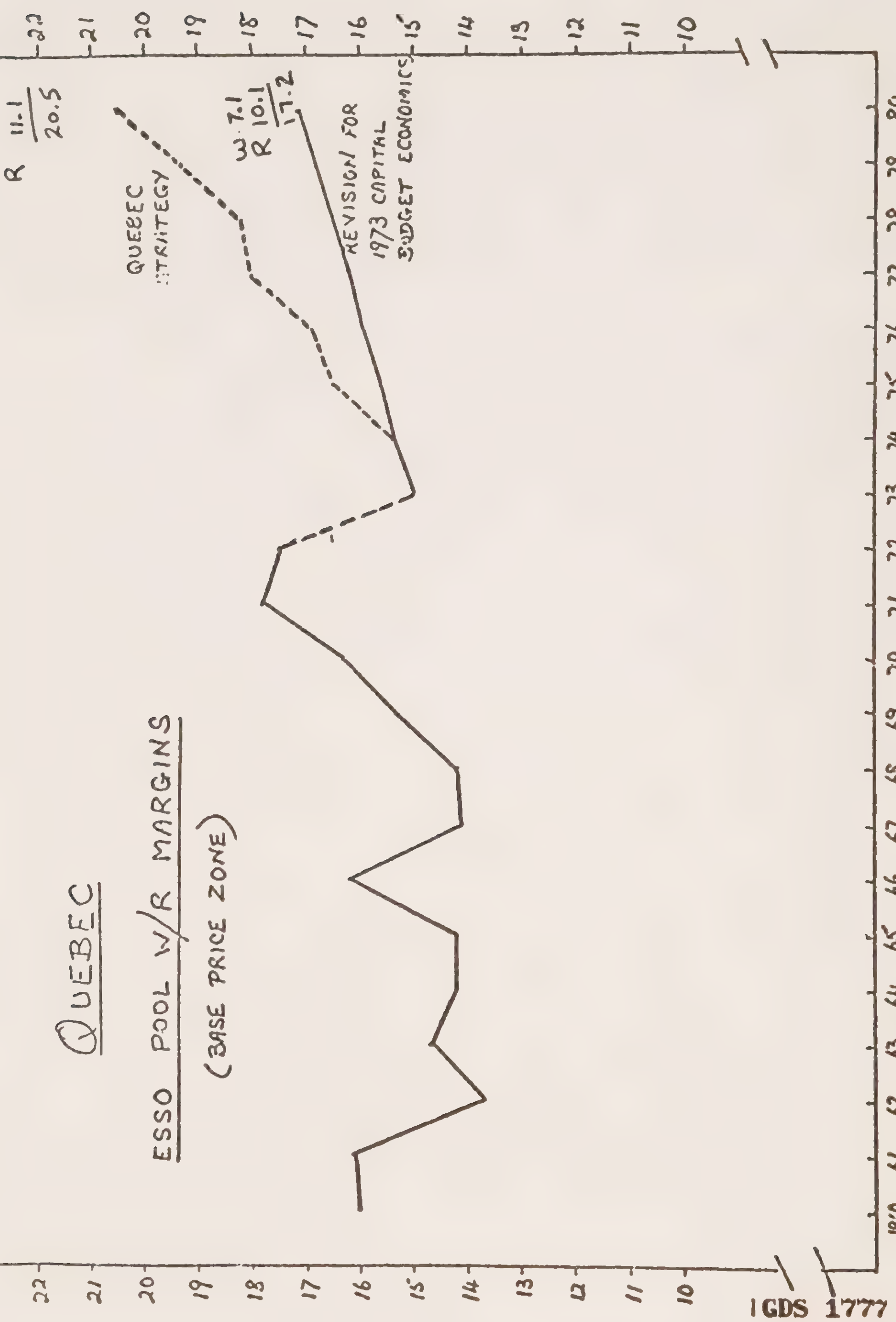
RETAIL RETAINS DEALER'S STANDARD OF LIVING



179972

(Reproduction of Document #179972
'Figure 13' added)

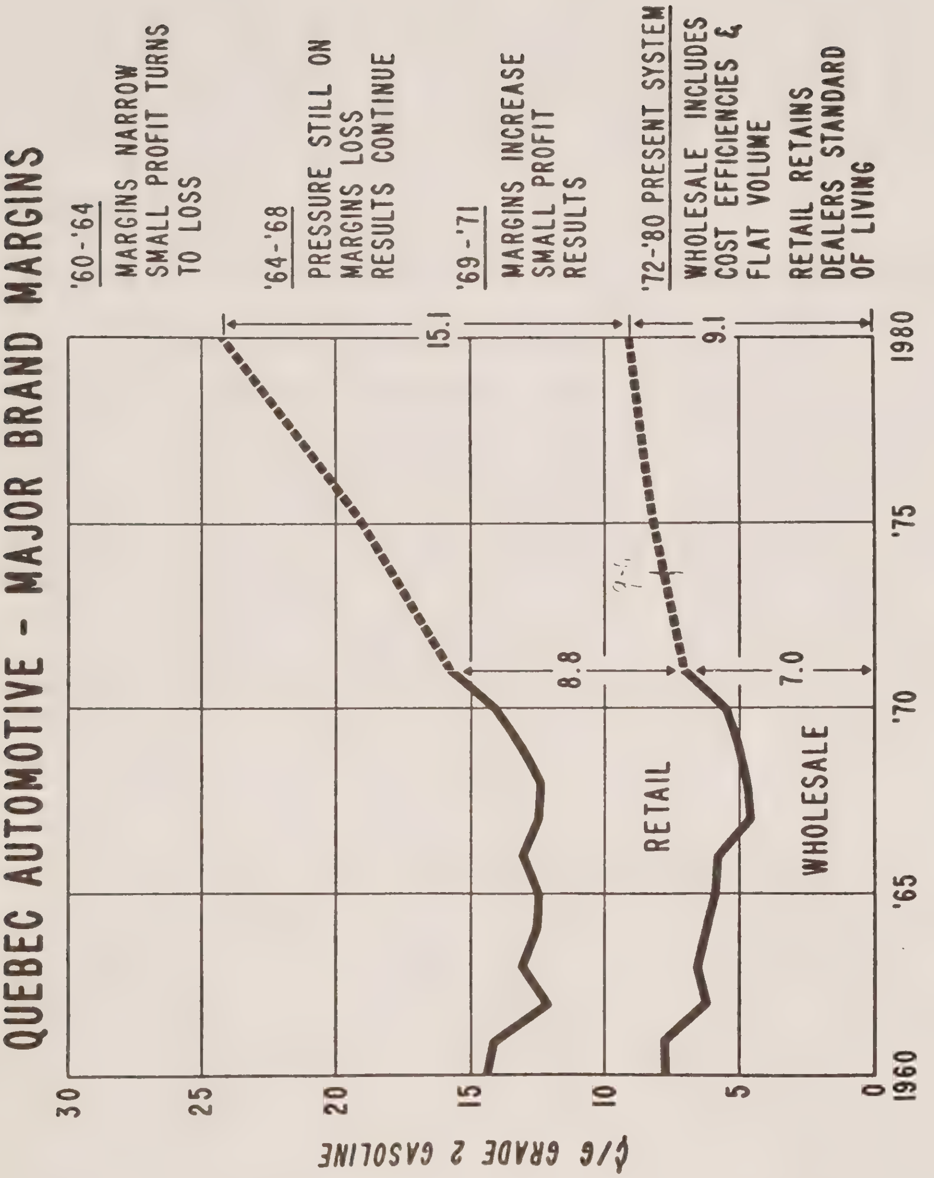
FIGURE 14



IGDS 1777

(Reproduction of Document #IGDS 1777 'Figure 14' added)

FIGURE 15



(Reproduction of Document #IGDS 1515
'Figure 15' added)

IGDS 1515

2) Pricing was localized and price spreads between major brands and discounters were tolerable.

3) The consumer had limited options other than brand and location."

(Documents # 35349-51, January, 1973, Shell)[195]

Although the independent marketers had threatened this style of marketing, they had been either disciplined or eliminated—"during the price war, many of the independents had been absorbed by the majors" (Document # 30777).[196] As a result, those few who continued to price below the majors had little "influence on the market". As Shell noted:

> "Historically, the market has been characterized by a common prevailing major brand price in each market area with most marketers pricing at the same level — normally DTW plus Dealer Margin. *The few mavericks usually did not have a significant influence on the market.*"
>
> (Document # 35410, January, 1973, Shell, emphasis added)[197]

The success of the majors' disciplinary pricing policies of the early nineteen sixties is evidenced by the sharp upward movement in retail and wholesale margins that took place in the latter half of the nineteen sixties. Figure 13 shows that, between 1965 and 1971, major brand margins for #2 gasoline in Ontario were increased from a little under 10 cents per gallon to some 17 cents per gallon. Figure 14 presents the Quebec margins for Esso's pooled gasoline volume.[1] The same restoration as in Ontario was started in 1965-66 in Quebec but foundered and was not begun again until 1968. By 1971 the margin between major brand and independents had reached 18 cents per gallon in Quebec — a figure similar to that in Ontario.

TABLE 21

GULF WHOLESALE/RETAIL MARGINS,
WINNIPEG AND CALGARY, 1965 & 1971
(¢ per gallon)

	Winnipeg		*Calgary*	
Margins	*1965*	*1971*	*1965*	*1971*
Dealer Margin	6.5	9.3	6.5	10.2
Wholesale Margin	4.5	8.8	6.2	8.1
Total	11.0	18.1	12.7	18.3
Increase (1965-71)	7.1		5.6	

Source: Document # 71486, Gulf[198]

1. In Quebec, premium sales accounted for almost 40 per cent of volume compared to between 10 and 20 per cent elsewhere. Therefore it is the pooled mogas margin which is relevant for Quebec. Figure 15 shows #2 gasoline margins.

A similar phenomenon occurred on the Prairies. Table 21 compares Gulf's wholesale and retail margins for both Winnipeg and Calgary in 1965 and 1971. In both cities, margins that were in the range of 12 cents per gallon in 1965 had been increased to over 18 cents per gallon by 1971.

As has been indicated before, it is important to set Canadian events within a broader context. While the elimination or disciplining of the independent competitor was essential to these price increases, the increases were predicated upon a forecast made by the majors that world crude markets would become tight and that higher prices could be sustained in the longer run. As early as 1966, a joint study by Imperial, Gulf, Texaco, Shell and Interprovincial Pipe Line predicted that the U.S. supply-demand balance would become such that by 1971 Canadian oil would have no trouble penetrating the U.S. market (Document # 111232-69, 111245 in particular).[199] Exxon's Western Hemisphere Supply Study which was dated 1968 felt 1975 would mark a decisive change in the U.S. market (Document # 90897)[200] but that the deficiency would be felt as early as 1970 (Document # 90915).[201] These forecasts on supply-demand balances were translated into predictions of upward movements in prices at all levels. For instance on July 15, 1968, Imperial Oil's producing department evaluated prevailing bids on property in western Canada and noted that it was apparent that the industry "is anticipating substantial increases in the demand for western Canadian crude in the mid 1970's" (Document # 107656).[202] At the same time, Imperial's parent corporation was predicting that the Quebec market which was influenced by offshore price trends would see a "significant" improvement in margins. Imperial, in 1969, when referring to its recent investments in Quebec noted:

> "These current investments are being made in anticipation of significant margin improvements in the Quebec market (in line with current Jersey forecasts)."
>
> (Document # 113050, February 12, 1969, Imperial)[203]

In the same vein, as early as 1968, Jersey had forecast an "increasing spread between world-wide crude and product prices..." (Document # 113044).[204]

Together, the successful disciplining of the independents and long term projections of tighter petroleum markets led the majors to increase their gasoline prices. The majors attempted "to improve unit margins through selective price increases" (Document # 30712).[205] Indicative of the fact that the majors attempted to 'lead' the market was the gradual widening of the gap between the independent and the branded sector. In the Ontario Automotive Strategy review prepared for Jersey Marketing in 1972, Imperial noted:

> "Since 1968 these differentials [between branded and independent] have broken out to a range of 4-13¢ per gallon as the majors and their dealers have widened their margins."
>
> (Document # 118395, March 10, 1972, Imperial)[206]

Information taken from a Gulf document and presented in Table 22 shows the spread between the majors and the lowest discounter in Quebec increasing by about 3 cents per gallon over the same period.

TABLE 22

SPREAD BETWEEN MAJORS AND
LOWEST DISCOUNTER, QUEBEC, 1969-71
($ per gallon)

Category	*1969*	*1970*	*1971*
Majors	.459	.469	.499
Lowest Discounter	.369	.369	.379
Spread	.090	.100	.120

Source: Document # 71462, Gulf[207]

The increase in major brand prices occurred because of both higher wholesale and retail margins. A Shell study entitled "Canadian Retailing in the Seventies" outlined the relative increases for Ontario:

> "IN 1967 A PRIBRAND OPERATOR HAD APPROXIMATELY 15¢ TO COVER PUMP PRICE DISCOUNT, OPERATING AND DISTRIBUTION COSTS AND PROFIT. BY 1972, THIS INCREASED BY 3¢ PER GALLON TO 18¢ AS A RESULT OF
>
> (a) INCREASE IN STANDARD DEALER MARGINS OF 1.5¢/GAL. (9.0¢ TO 10.5¢).
>
> (b) INCREASE IN DIFFERENTIAL BETWEEN WHOLE-SALE PRICE TO PRIBRAND OPERATORS AND DEALER T.W. OF 1.5¢.
>
> (WHOLESALE PRICE 16¢ TO 17¢)
> (DEALER TANK WAGON 22¢ to 24.5¢)"
>
> (Document #34768, Undated, Shell)[208]

The combination of increases in wholesale prices as well as in dealer margins occurred in most Canadian cities. Table 23 shows the increases in selected cities experienced by Gulf between 1968 and 1972. Column IV contains the total of tankwagon and dealer margin increases. Column V contains Gulf's increase in netbacks in the industrial market for #2 gasoline for the regions in which each of the respective cities were located. It provides a measure of the state of wholesale markets. Comparison of columns II and V shows that the spread between the branded retail price and the wholesale price increased for all markets.

TABLE 23

INCREASES IN DEALER TANKWAGON PRICES AND DEALER MARGINS, BY SELECTED METROPOLITAN AREA
($ per gallon)

City	*Increase in Average Realization at Tankwagon level Jan. 68-Oct. 72* Posted	Realized	*Increases in Dealer Margins 1968-1972*	*Total*	*Increase in Netback #2 Gasoline Industrial Market Mar. 69-Sept. 72*
	I	II	III	IV	V
Halifax	.0430	.0389	.010	.0489	.014
Montreal	.0450	.0316	.012	.0436	.020
Toronto	.0200	.0134	.012	.0254	.090
Calgary	.0270	.0212	.013	.0342	−.080
Vancouver	.0270	.0243	.023	.0473	.080

Source: Tankwagon prices: Document # 62070, Gulf[209]
Dealer Margins: Document # 74625-30, Gulf[210]
Increase in Netback in Industrial Market: Document # 139034-115, Gulf[211]

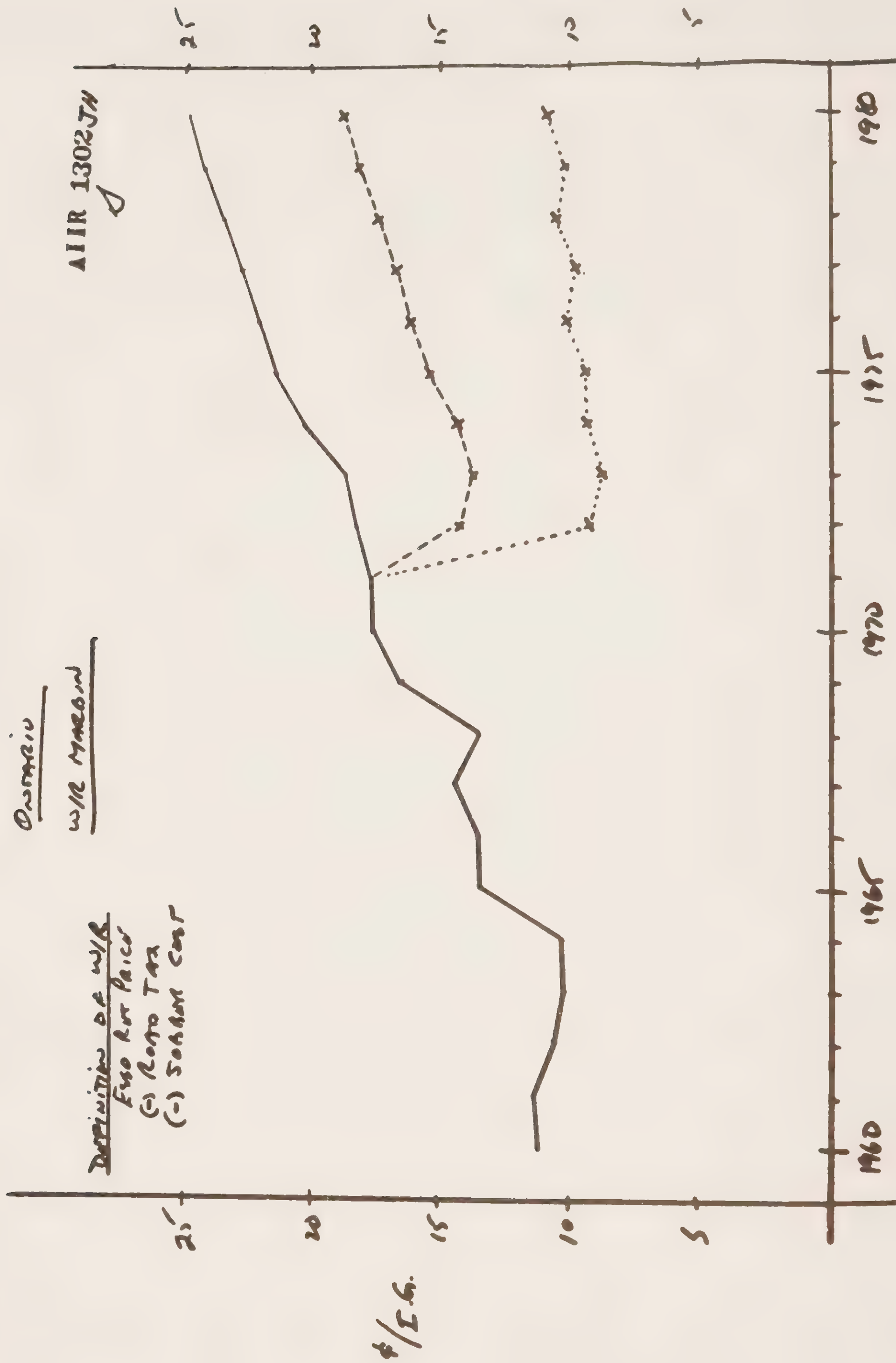
As a result, the effort by the majors to strengthen brand prices left an ever widening umbrella under which the independents could operate. Figure 16 presents this margin — Esso retail price minus road tax minus jobber cost — for Ontario between 1960 and 1971. Figures 17 and 18 present the differences between the major brand and the independents' prices that developed. By 1971, the median differential was some 9 cents per gallon and the highest differential was about 12 cents per gallon. Figure 19 shows that a similar trend developed in Quebec.

Margins of the magnitude that developed in the late nineteen sixties threatened to cause a general collapse in the branded price structure as the independents began to expand their market share. In order to prevent this, the majors moved to contain the independent private brands. They implemented a two fold approach to enforce this strategy. On the one hand, they poured new sums of capital into the branded network. Texaco noted that:

> "Major Cos. such as Shell, Esso & Gulf to a lessor [sic] degree started a massive program building Tunnel type Car washes where they offered a free C/W [car-wash] with a fill up."
>
> (Document # 45780, Undated, Texaco)[212]

Shell, one of the most active firms in this area, noted that this response was one that was strictly based on the heavy use of capital — the traditional form of non-price competition that had been used in the nineteen fifties:

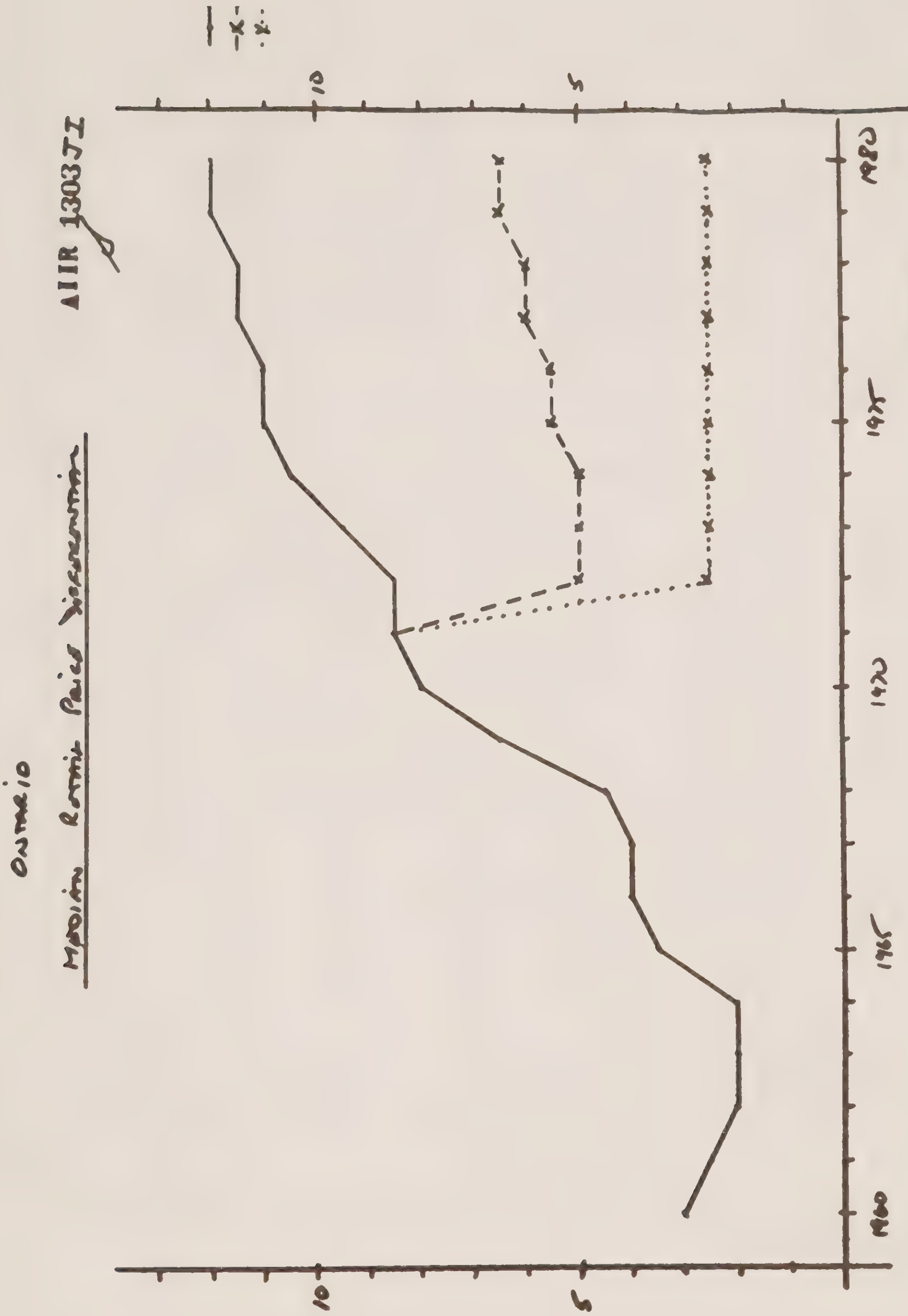
FIGURE 16



(Reproduction of Document #179165 'Figure 16' added)

179165

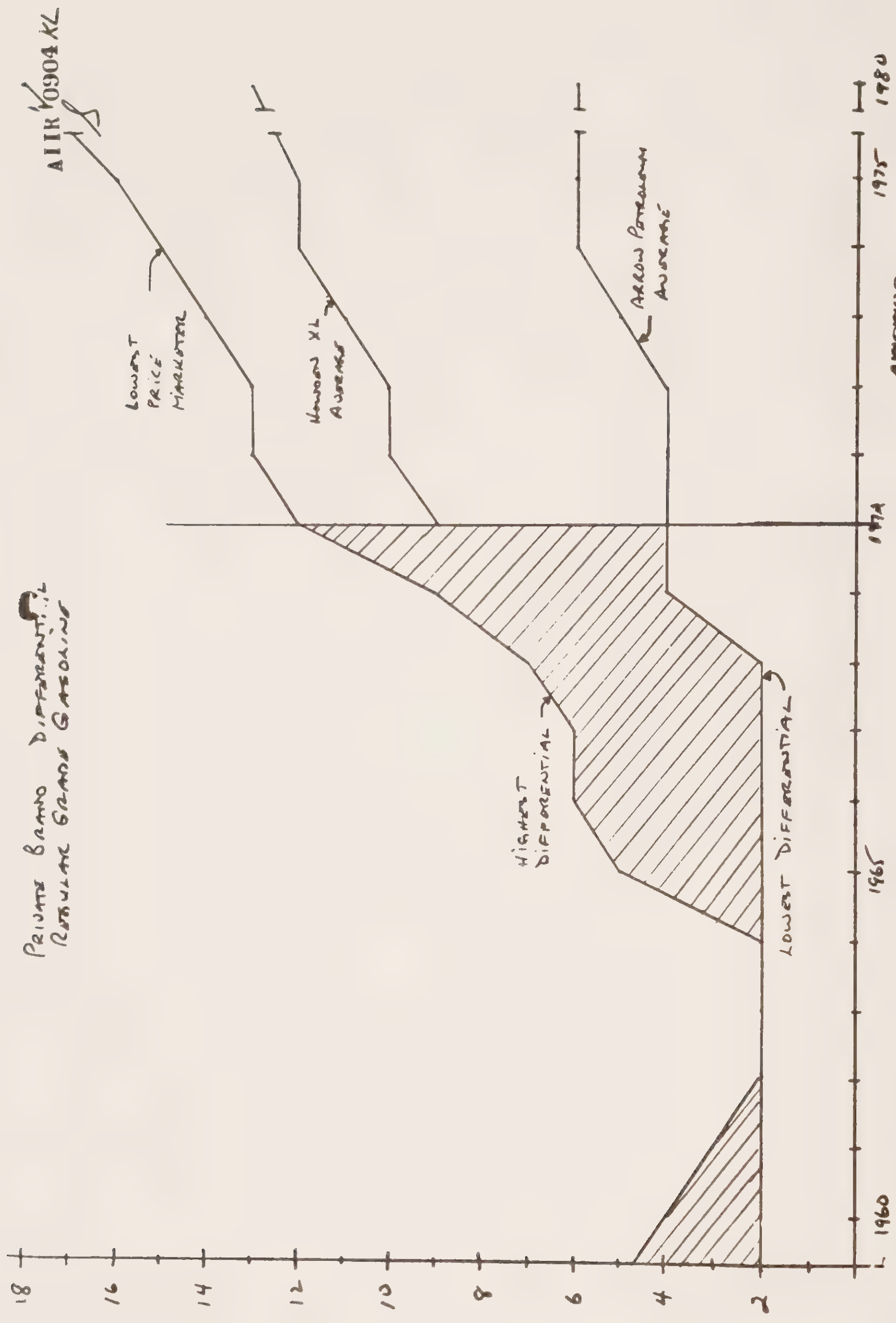
FIGURE 17



179166

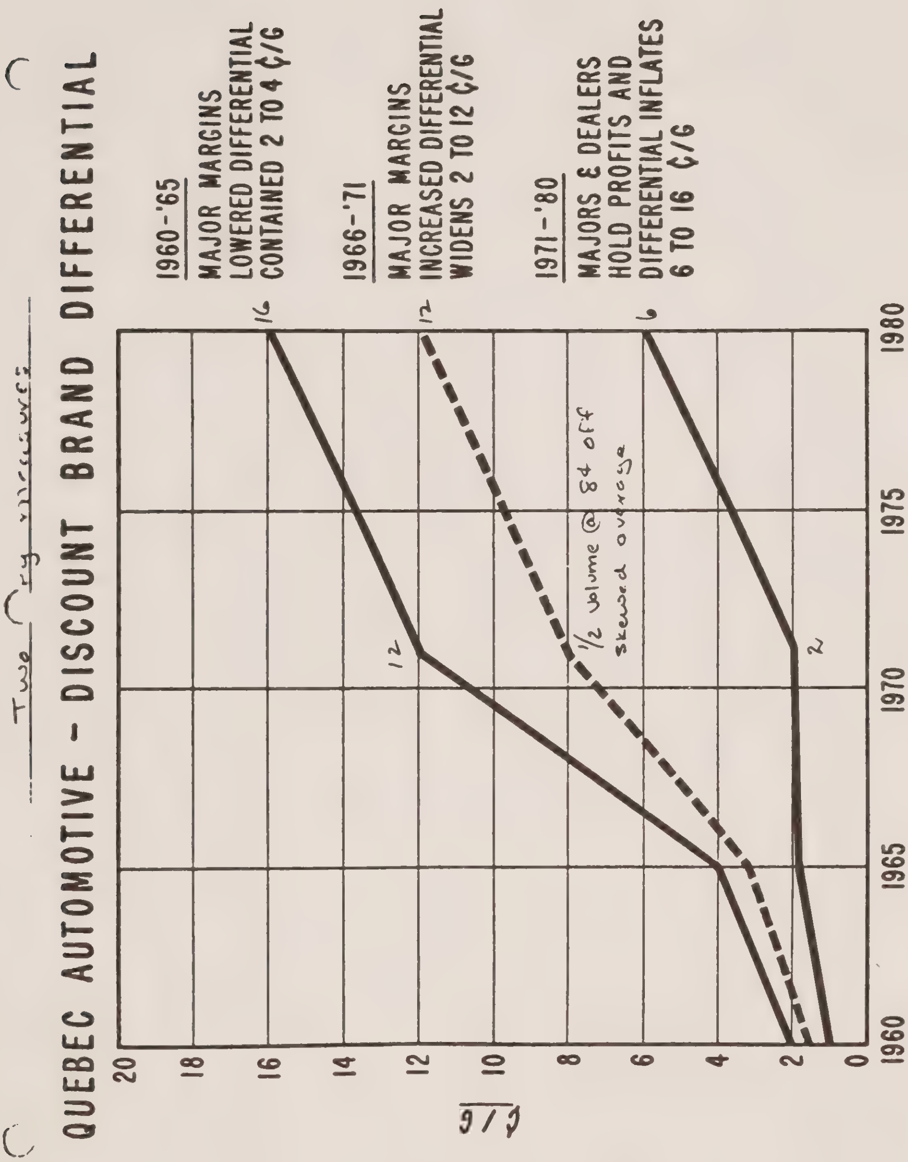
(Reproduction of Document #179166
'Figure 17' added)

FIGURE 18



(Reproduction of Document #178763
'Figure 18' added)

FIGURE 19



(Reproduction of Document #IGDS 1326 'Figure 19' added)

IGDS 1326

"In recent years there has emerged the augmented service facility, such as the car wash and the convenient food store. . . .they permit the capital-strong marketer to maintain himself against pure gasoline commodity selling."

(Document # 28384, July 14, 1972, Shell)[213]

At the same time as massive sums were being spent on the brand, the majors entered into direct competition with the independents in the lower priced markets by establishing and expanding their own private or second brand networks. Both policies, as Texaco noted, were meant to prevent more widespread price competition. In referring to the competition offered by independents, Texaco, in 1972, noted:

"Major brands, notably SHELL and IMPERIAL, are apparently reluctant to meet this price competition on a direct branded basis, and have chosen to retain their share of the market by:-

(a) Establishing their own private brand outlets.

(b) Rapidly expanding car wash and self-serve facilities, both of which have the effect of perceivably reducing the retail price of gasoline."

(Document # 58384, June 28, 1972, Texaco)[214]

In effect, the majors moved to develop a system of optimal price discrimination. Normally, price discrimination is a manifestation of market power. But in this case, the very process that was used to segment the market was meant to give the majors the power necessary to enforce the scheme of price discrimination. For the private brand system was meant to discipline the independents so as to permit the majors to establish a differential between the branded and the unbranded market that was optimal from their point of view.

The observations of Gulf outline the manner in which both Shell and Imperial proceeded to force prices at the low end of the market upward using both of these instruments.[1] In referring to Shell, Gulf noted:

"Their intention appears to be to gain control of as much supply of gasoline as possible in both the branded and unbranded markets and in that way control, and eventually, improve realizations."

(Document # 75095, May 8, 1972, Gulf)[215]

In referring to Imperial, Gulf noted that "the Esso brand provides price leadership" while Imperial was using the Econo brand "to directly meet the reseller competition" (Document # 66186).[216] More noteworthy is Gulf's observation that Imperial was using Econo as a "weapon" against the independents:

"Their [Imperial] strategy appears to be to keep the Esso brand relatively free of the discount market while at the same time develop a single separate price brand (Relais in Quebec, Econo in the rest of Canada) which can be used as a weapon against the unbranded price discounters where necessary."

(Document # 72354, September 30, 1969, Gulf)[217]

---

1. See sections on Shell's and Imperial's second brand networks for further evidence on this point.

The majors also used support programmes for their brand — via both temporary allowance and consignment programmes. These support programmes had more than one purpose. They may be regarded as one more device that was used to perfect a system of price discrimination. As the majors implemented wider and wider margins, they discovered that entry by independents was greater in some areas than others. Rather than decrease branded prices everywhere, they implemented subsidy programmes to reduce branded prices only where this was necessary. But even when this was done, consignment was not intended to support permanent variations in prices across different geographic submarkets. Evidence shows that the majors dropped brand prices well below their perception as to either the 'value' or the cost of the brand. With brand costs amounting to between 5 and 8 cents per gallon, the differential given the unbrandeds was often only 2 cents. Support programmes along with private brands were designed to give the independents a 'two-fold jolt' and to discipline this sector. Support programmes were also implemented in other areas where prices broke down for other reasons. Some of the regional marketers found that the second brand strategy of the larger majors affected not only the independents but also themselves. They responded by cutting their brand prices using support programmes (Document # 32175-6).[218] In addition, some of the smaller regional marketers had sufficiently scattered representation in the market that they could not restrict their response to independents to stations located immediately adjacent to the independents. When they introduced subsidies at stations somewhat removed from independent activity, they spread the pockets of price competition and caused the largest majors to duplicate their subsidies. Evidence indicates that the majors designed their programmes to teach the regional marketer that this reaction would not be tolerated.

At the same time as the majors were experimenting with a system that would give them higher branded prices, a change in world crude markets occurred that caused the majors to modify their policies in an even more predatory direction. By the early nineteen seventies, crude prices began to escalate as the petroleum industry had predicted; however, a new phenomenon developed that had not been foreseen. The 'Organization of Petroleum Exporting Countries' (OPEC) began to exert its power to force crude prices upwards. OPEC's power as an export cartel foreshadowed a gradual loss in the extent of the majors' crude control — a loss which meant that upstream profits could no longer be used to subsidize downstream markets. Gulf noted that OPEC's rise would require greater emphasis on the marketing sector:

> "Production profit days are over as O.P.E.C. countries are gradually taking over control of aboveground operation. Marketing will become increasingly responsible for profits."
>
> (Document # 73035, April 23, 1973, Gulf)[219]

Similarly, a meeting of Exxon Chief Executives focused on the need to make marketing profitable. It noted that with the advent of OPEC's exercise of power, the multinationals' crude profits were vulnerable and the:

> ". . . challenge is to follow a strategy that will result in the adequate downstream profit results with the best overall return for the Company, preparing us for an eventual time when we are unable to count on much equity producing profit."
>
> (Document # 110456, April 3, 1973, Imperial)[220]

Exxon felt it could achieve adequate downstream profits by carefully applying upward pressure to the crude prices its affiliates paid — so as not to contribute to any softening of downstream retail markets:

> ". . . we must be sure that any restructured arrangements with affiliates do not result in prices falling significantly below the value of crudes so that we put pressure on downstream markets and, thus, undercut our major goal of achieving adequate profits in our refining and marketing systems."
>
> (Document # 110459, April 3, 1973, Imperial)[221]

Equally important was the notion that extensive new investments at the retail level would be required if 'control' was to be maintained in this sector. This was especially important in view of the fact that control in the crude sector was being wrested from the majors by producing governments. At an Exxon conference of Chief Executives in March of 1972, in discussing the increased participation of host governments, it was noted:

> "In the meantime, increased government take or cost must be recovered in downstream prices and the companies will stay in the Middle East under declining terms resisting each new demand.
>
> . . .
>
> "Tactically the industry must maintain control . . .yet accept the probability it will become an oil purchaser."
>
> (Document # 92862, April 6, 1972, Imperial)[222]

One of the ways control could be retained, Exxon recognized, was via diversification of production sources. But in addition, Exxon recognized the need for heavy investment downstream in marketing:

> "Finally, as noted before, the situation argues for intensifying downstream investment to protect marketing position,..."
>
> (Document # 92862-3, April 6, 1972, Imperial)[223]

Therefore, the period after 1972 was marked by not only a distinct change in the competitive environment but also by a switch in the majors' marketing strategy. Up until 1971-72, the majors' policies essentially were aimed at finding and devising an optimal scheme of price discrimination —

what they referred to as market segmentation. Branded prices were moved upwards, and sustained with a two-fold approach. First, heavy capital expenditures were made on the brand — much akin to the nineteen fifties; secondly, a predatory second brand network was established by the two largest majors to contain the spread of the unbrandeds as the differential between branded and unbranded prices widened. By late 1972, the majors adopted an even more aggressive policy. The branded price structure was collapsed, private brands lowered their prices even further and the majors began to try to force up the wholesale price to the independents to squeeze this sector even more than previously. The majors' action in this latter period, while essentially an intensification of earlier policies, can be explained not so much by the failure of their earlier policies as by the change in circumstances described above. For their optimal price discrimination policy of the earlier period — with high brand prices and controlled expansion of the low price segment — would have been predicated in part upon their ability to control access by independents to crude sources. With the gradual loss in crude control, the rate at which independents might enter the market was changed. As a result, what had previously been an optimal degree of price discrimination would no longer have been so.

There was a second consideration — also stemming from the changes occurring in the world crude market — that led the majors in Canada to adopt a much more aggressive pricing policy. As the documents quoted above indicated, the international majors recognized that profits would have to be made in downstream markets and that these markets could be strengthened with an appropriate pricing policy to their affiliates. The International volume indicated that the parent companies had lagged behind world trends in the prices that they charged their Canadian subsidiaries in the nineteen sixties, a time when prices were trending downwards; in contrast, in the early nineteen seventies, they attempted to force crude prices upwards at a somewhat faster pace. For instance, by 1972, Gulf Canada noted that because of increases in its imported crude costs in Montreal, its refinery transfer prices had exceeded the landed cost of imports (Document # 71461).[224] At the same time, Figure 20 demonstrates that Gulf was raising its tankwagon price of gasoline by even greater amounts than the increase in its transfer price occasioned by crude increases. For instance, between 1969 and 1971, the refinery transfer price was increased from about 10.2 to 10.5 cents per gallon while the tankwagon price went up from about 18.6 to 22.1 cents per gallon. Extraction of higher margins from the Canadian market increased the importance of controlling the independents.

In summary, both the change in crude control and the push by the parent companies to extract more from their downstream affiliates led the Canadian majors to implement a pricing strategy in late 1972 that was no longer just aimed at controlling the growth of the low priced segment of the market. It's objective was redirected towards the elimination of independent marketers of gasoline.

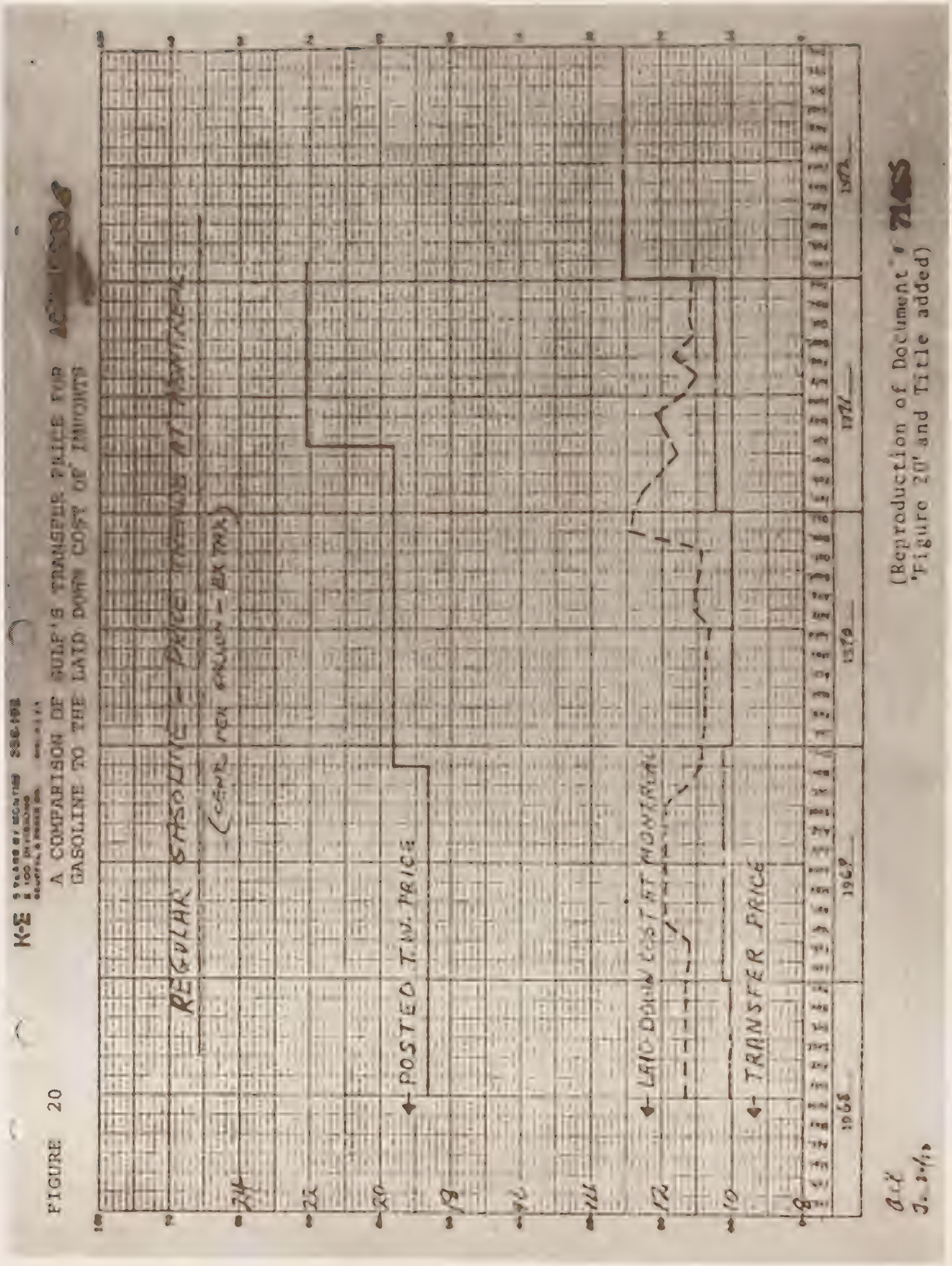


FIGURE 20
A COMPARISON OF GULF'S TRANSFER PRICE FOR
GASOLINE TO THE LAID DOWN COST OF IMPORTS
REGULAR GASOLINE — PRICE TRENDS AT MONTREAL
(CENTS PER GALLON — EXTRA)
POSTED T.W. PRICE
LAID DOWN COST AT MONTREAL
TRANSFER PRICE
24
22
20
18
16
14
12
10
8
1968
1969
1970
1971
1972
(Reproduction of Document
'Figure 20' and Title added)

The following sections outline the methods that each of the majors used to perfect the system of price discrimination and, in particular, to discipline the independents and to contain price competition. Not all companies adopted the same policies; nor, when they did so, was the emphasis necessarily the same. By looking at each company separately, an appreciation can be attained of the variety of methods that were used by the majors to restrict competition. This is particularly important if remedies to this type of behaviour are to be devised. In particular, to the extent that the practices that were employed are substitutes one for another, then the proscription of any subset may not accomplish the desired results.

The behaviour of each company is examined separately in the following sections. However, it should be understood that it was the actions of this group as a whole — and their relative size as a group — that determined the efficacy of the monopolistic practices that were adopted to injure the independents. The success of these practices in restraining competition can be attributed to the way in which the practices or policies of each major were mutually reinforcing. The majors understood their common interests — the need to protect their high cost branded distribution networks — and perceived a common enemy — the more efficient independent marketers who threatened the price structure of the branded networks. The majors directed their predatory or disciplinary policies towards the independent sector. These common policies were implemented by each firm following a careful study of what each of the other majors were doing and with an appreciation that these policies were predatory or disciplinary in intent or effect. This knowledge was reinforced, on occasion, by communication among firms. Each firm then adopted policies which best suited its own situation but which also contributed to the common objective of containing the independents. Thus the majors were able to coordinate their reaction to the independent sector in such a way that they can be considered to have functioned as a unit against the independent marketers.

It might be argued that the petroleum industry was just exhibiting the tendency of conscious parallelism expected of an oligopoly. It is sometimes argued that the failure to compete is a natural tendency in this situation. But these arguments usually are made with regards to mutual forbearance where the lack of aggressive behaviour can result in an oligopolistic equilibrium with high prices and little competition. This was not the behaviour which is under consideration in the following sections. It should be emphasized that the predatory policies under study here were all adopted as conscious acts by the majors. Therefore, what we have here are acts of commission — not acts of omision. The exclusionary acts were taken with the express purpose of interfering with the competitive process.

There is another major difference between what happened in the petroleum industry and what is normally described as conscious parallelism in

an oligopoly. The normal description of conscious parallelism often implies a sense of inevitability about the result — that the choice set for firms in an oligopoly is so narrow only one outcome can be expected. This was not the case here. Each of the majors was not restricted to adopting parallel predatory policies. The majors did not have to follow one another in adopting the policies that were aimed at the elimination of independents. For example, in the section dealing with Texaco, it will be demonstrated that this company consciously chose to adopt a policy similar to that being employed by Imperial even though Texaco understood Imperial's purpose was to squeeze the independents. Texaco could have remained competitive in the marketplace using other policies that Texaco itself admitted were administratively less complicated. It is the exclusionary manner in which these companies used these monopolistic practices that indicates that these firms acted as a monopolistic unit to the detriment of the public. Key to an understanding of the way in which the majors functioned as a unit is a description of the relative roles adopted by each firm. In the production sector, as was demonstrated, the industry devolved the leadership role upon Imperial. In marketing, this role too fell partially to Imperial. In the production sector, there was a second large firm — Gulf — which wielded some power and which discussed pricing policy with Imperial. In the marketing sector, it was Shell which played this role. As has already been described in the section on the nineteen fifties, it was Shell's sales respresentatives who communicated with their Imperial counterparts when aggressive pricing action was taken against independents.

Imperial recognized that it was the price leader in the industry. In 1955, W.O. Twaits, then Executive Vice-President and eventually President noted "we are the price leader" (Document # 128001).[225] Fifteen years later — it still was accepted as the price leader. For instance, in an Imperial analysis "to determine if the opportunity exists to increase the price of mogas, diesel and heating oil in the Prairie region" (Document # 123449),[226] the following description of the effects of Imperial's role was outlined:

> "PRICE CHANGES BY I.O.L. HAVE RESULTED IN COMPETITION FOLLOWING
>
> I.O.L. RECOGNIZED AS 'BAROMETRIC' PRICE LOADER [sic]
>
> ACCEPTANCE OF COMPETITORS TO FOLLOW HAS RESULTED IN A MINIMUM OF CUSTOMER SHIFTING"
>
> (Document # 123456, Undated, Imperial)[227]

Similarly, a memorandum on the possible effect of changes in Combines laws referred to Imperial "As a frequent price leader" (Document # 120670)[228]

Concomitant with Imperial's acknowledgement that it was the price leader was its expressed understanding of how the other majors would follow its actions. In a 1972 summary of the "competitive posture of the major oil

companies", Imperial characterized both Gulf and Texaco as followers. In referring to Gulf's pricing policies, Imperial noted that Gulf "follows Imperial and Shell in Pricing" (Document # 120089).[229] As for Texaco, Imperial noted that it followed other majors (Document # 120090).[230] While Shell rivalled Imperial in terms of size at the marketing stage, it was not an aggressive price cutter. Imperial's description of Shell was:

> "Shell is the leader in Canada in cross-merchandising car washes with gasoline. As a result of the heavy investment Shell desires to keep the major brand price high."
>
> (Document # 120077, June 6, 1972, Imperial)[231]

In light of this behavioural pattern, Imperial was of the opinion that its own actions would be followed by other companies. For instance, in a study done on the Quebec market, Imperial outlined how it intended to move prices upward via price leadership. Its objectives were to:

> "MAINTAIN THE HARD GAINED HIGH IMPERIAL EXISTING PUMP PRICE LEVELS AND ENCOURAGE COMPETITORS (SHELL) WHO ARE ALSO SO INCLINED TO 'HOLD FAST'."
>
> (Document # IGDS 417, March 22, 1972, Imperial)[232]

Its method was to:

> "ENCOURAGE 'PRICE CUT' INCLINED MAJORS TO 'LIFT' VIA 'TOLERANCE METHOD'."
>
> (Document # IGDS 417, March 22, 1972, Imperial)[233]

In summary, Imperial understood that its actions would influence those of the other majors and acted accordingly.

Shell's perception of the industry model was identical to that of Imperial. For instance, in November of 1969, Shell noted that either itself or Imperial would have to lead a price increase:

> "We have never seen Gulf lead prices upward and in fact they have been reluctant to follow any increase initiated by Shell unless Esso follow along first. It therefore would appear that it will be either Esso or ourselves who will make the first move."
>
> (Document # 32836-7, November 5, 1969, Shell)[234]

Some three years later in 1972, Shell recounted the way in which the majors acquiesced to its leadership:

> "During the recent period of price strengthening Imperial Oil has shown a strong tendency to improve product prices at every opportunity and in cases where Shell has led the price upward, Imperial Oil has followed accordingly. . . .With regard to the other majors, Gulf and Texaco, while not normally price leaders, have not hesitated in taking every opportunity to follow upward price movements."
>
> (Document # 33106, September 21, 1971, Shell)[235]

Shell also noted that, with respect to other regional marketers such as Fina, B.P., and Golden Eagle:

> "At the time of the price adjustment in April, we found that all refiners were reasonably quick to respond to the higher prices once the lead was set by Imperial Oil."
>
> (Document # 33106, September 21, 1971, Shell)[236]

Even though Shell could regard itself as a "major market influence" (Document # 34519),[237] it took care to communicate its intentions to other firms. In some cases this took the form of public announcements. For instance, following a Regional Managers Meeting in 1972, it was noted that:

> "We should consider the possibility of a price restoration in October. A public announcement of our intention may be needed to get other companies attention in the present confused market."
>
> (Document # 32979, September 6, 1972, Shell)[238]

Similarly, a District Sales Managers meeting on "Price Restoration" decided that Shell should make a public statement on the necessity of the industry moving to higher price levels:

> "Our deliberations were rewarded in a consensus on item 7, table 'B' as the nucleus of a 'Selective Trade Area Price Restoration'. For your convenience, I have quoted item 7 below:
>
> > 'Selective trade area price restoration for both branded and pribrand outlets — imperative that our dissatisfaction with price erosion in the market place be publicized — *predicated on sufficient weight in the 'price' segment of the market prior to moving upwards'.*"
>
> (Document # 58553, October 24, 1972, Shell, emphasis added)[239]

The purpose of such announcements,[1] as Shell indicated, was to ensure "that there is little chance of misinterpretation by anyone" (Document # 58567).[241]

Even when not using public announcements, Shell implemented and withdrew the policies it used to fight the independents in such a way as to signal its objectives to the other majors. For instance, in 1971, Shell decided to withdraw price support on a widespread basis rather than selectively in areas where competition was less intense because it felt the former tactic would be more easily interpreted by the rest of the industry:

---

1. With their November restoration the following document was issued from the Vice-President of Marketing's Office Mr. Williams by Mr. Seager (General Manager of Marketing)—see Toronto Hearings, 1975, Vol. III, pp. 414-5:

> "Notification of the move in Ontario — removal of the T.V.A. — has been released to Platt's Oilgram, . . .with the expectation that it will be picked up for current publication."
>
> (Document # 32999, November 13, 1972, Shell)[240]

"As we discussed, it would seem to be an opportune time to endeavour to restore prices by withdrawing our support in currently depressed areas. In view of the multiplicity of price cutters, it would be difficult to take selected areas to withdraw price support as we would run the risk of having our action misread as there would be no consistency across the Region."

(Document # 33093, August 5, 1971, Shell)[242]

A year later, Shell decided to meet price competition but to do it in such a way that other majors did not "misread" its intentions. The Vice-President (Marketing) wrote to the Regional Manager Central Marketing Region giving permission to implement support at the price of 46.9 cents per gallon:

"We recognize that in a few deep discount pockets a 44.9 price would possibly serve our purposes better, but we are concerned that the market may misread our intentions inasmuch as no majors are currently pricing below 46.9 except for two outlets in the Beach area which appears to be outside of the territory under consideration."

(Document # 32183, June 8, 1972, Shell)[243]

Each of these examples of communication indicates that Shell was following a certain course of action not because others were, but with the intent of persuading others to follow. It was, in effect, making an offer, with the objective of having it accepted by the other firms in the industry.

While Shell took care that its general policies were communicated to the other majors via public announcements or via other signals, there is evidence of more direct communications. The liaison between Shell and Imperial sales representatives in the nineteen fifties has already been described. Other such events took place. Shell's documents show discussions at the sales representative level in local markets that confirm the interaction between the majors. Examples are:

"Listed are the retail pump prices of Gasoline in Fort William. I have broken it down into trading areas and included my comments. The Port Arthur sales rep and myself are arranging a meeting the early part of next with competitive sales reps to get some actual gallonage readings.

. . .

"The B.A. rep advises that he has had the same problem with his lessees . . ..

. . .

"I hope to get some accurate statistics from Esso, B.A. & possibly Texaco reps s.a.p."

(Document # 32950, October 23, 1968, Shell)[244]

While Imperial and Shell both were leaders, the other majors adopted a follower role, patterning their response to situations so as to support the

leaders. Gulf, for instance, recognized that the leaders in the industry were Imperial and Shell. In 1969, a Gulf description of the Atlantic division commenced with the statement:

> "As in virtually all areas across Canada Imperial Oil are the acknowledged price leaders in the Atlantic Provinces."
>
> (Document # 70490, January 17, 1969, Gulf)[245]

It is important to recognize that Gulf followed the two leaders in more than just general price changes. Gulf also patterned its response to the independent sector after Imperial and Shell:

> "Gulf has traditionally followed Esso and/or Shell in extending price support to dealers. Until the introduction of Gulf's revised Price Support Policy [September 1972], Gulf did not have as many outlets below major price as do the other major companies, excluding Second Brand operations in either case."
>
> (Document # 67272, Undated, Gulf)[246]

From this quotation, it is apparent that Gulf was content to follow a less aggressive strategy than either Shell or Imperial. Evidence shows that a similar policy was being followed a year later:

> "Our pricing strategy should be to move only after the other majors have moved first.
>
> "Our prices should be competitive with the higher of Imperial and Shell."
>
> (Document # 136596, May 8, 1974, Gulf)[247]

Texaco, too, opted for a follower role. In Quebec, Texaco described its pricing policy as one of "following the majors, that is, primarily Imperial Oil" (Document # 46255).[248] Its pricing guidelines, issued in 1970, noted "Whenever our major competitor [Imperial] or Shell and Gulf change pricing structure, we can immediately follow" (Document # 8789).[249] An even more detailed outline of how closely Texaco followed the majors is provided by the following:

> "All major brand companies are reluctant to lower retail pump prices to close the gap with private brand competition. When assisting retailers major brand outlets have stayed within $0.02 of private brand retail pump prices. Texaco's philosophy has been to wait until Imperial Oil or Shell and Gulf or any two of these competitors have assisted their retailers to establish lower retail pump prices. In specific marketing areas where there has been strong private brand competition or situations involving major oil company private brand outlets, we have established Regent locations selling at competitive retail pump prices."
>
> (Document # 58392-3, June 14, 1971, Texaco)[250]

In the case of both Imperial and Shell, it is clear these firms held out their actions on the understanding that certain actions by the other majors would follow. Moreover, the type of evidence cited in the Shell documents shows that the leadership role was not something that innocently devolved upon these

two firms. Their policies were aimed at communicating intent; as such, it may be concluded that they consciously attempted to coordinate policy. The actions of the followers equally imply an attempt to do the same. As will be developed in subsequent sections, firms like Texaco and Gulf carefully evaluated the policies of the other two majors, credited them with being predatory or disciplinary in intent, and then followed similar policies of their own. Their policies were, therefore, supportive. In addition, Gulf noted that it was "doing its part" to raise wholesale prices — one of the policies the majors realized was necessary if the independents were to be squeezed:

> "As a refiner and supplier, Gulf is doing its part in attempting to receive a better price for its products at the refinery gate or terminal."
>
> (Document # 67186-7, September 10, 1970, Gulf)[251]

Similarly, Texaco noted that it adopted higher brand prices in order to "contribute to market strengthening":

> "We could, of course, have met our volume objective had we elected to accept the lower revenue necessary to have our retailers compete at retail with these competitors, *but we chose instead to endeavour to contribute to market strengthening.*"
>
> (Document # 57769, February 17, 1971, Texaco, emphasis added)[252]

Statements, then by the followers illustrate an understanding by these firms that supportive actions were necessary to the overall industry objective. As such, the followers actions were implicitly conditional on the actions of others. The followers thus consciously participated in the unit that controlled the industry via various exclusionary practices.

The fact that the followers so closely patterned their reactions against the independent marketers indicates a very different form of behaviour to that normally ascribed to interdependent oligopolists. It is normally agreed that, in a tightly-knit oligopoly, the element of interdependence forces the followers to duplicate the actions of the leading firm when it drops its price. But this argument is inappropriate here for it ignores the fact that the policy followed by Imperial was often more complicated than a simple decrease in price. The majors who were classified as followers unnecessarily implemented policies with the aim of supporting Imperial's lead not just in dropping prices but in doing it in a way designed to squeeze the independents. For example, in 1968, Texaco followed identically the policy that Imperial adopted to squeeze the independents. Yet Texaco recognized that other options were available to it to remain competitive with Imperial that were administratively less complicated. The fact that Texaco followed Imperial and Shell so closely — consignment in areas where consignment was being used, second brands in areas where second brands were being used — shows this phenomenon was widespread. Supportive predato-

ry behaviour of this nature cannot be described as innocent conscious parallelism.

Two other pieces of evidence imply that these firms did not act independently. First, Shell, Gulf, Texaco, and Imperial apparently exchanged information on how consignment was being used or how sales to the independent sector were coordinated within each company. Secondly, both Gulf and Texaco showed themselves perfectly capable of adopting the leadership role and introducing the same predatory policies they usually awaited Imperial and Shell to implement. This was apparently done in markets where Shell and Imperial did not have sufficient representation to make them the leaders. This is particularly important because it suggests that there was an implicit understanding as to roles. In production, it was argued that leadership was not just the natural result of the relative size of Imperial, rather, the other firms appreciated the benefits of devolving leadership to Imperial and willingly submitted to it when they did not have to do so. The same argument is applicable to marketing because of the fact that Texaco and Gulf took the lead in implementing some disciplinary practices, but only where it would not disrupt traditional relationships among the companies. In addition, it shows that the two traditional followers, even when they did not have to do so because of prior action by the leaders, chose to implement predatory policies.

In summary, it is one thing for each firm in an industry acting independently to arrive at a policy that resembles that adopted by the others. However, it is an entirely different matter to engage in communications and reinforcing parallel behaviour of a type that was deliberately aimed at the development of joint exclusionary action against the independents. In what follows, the reaction of each of the majors to the independent sector is described separately. While this approach provides considerable detail, it is required if the role of each company is to be appreciated. Although each section concentrates on the behaviour of a single company, the reinforcement mechanism at work in the industry must be borne in mind. Only by doing so can the mutually reinforcing nature of the policies be fully understood.

2. *Shell Oil — Marketing Practices*

(a) *Introduction*

During the late nineteen sixties and early nineteen seventies, Shell and the other major petroleum marketers adopted one or more variants of temporary allowances, consignment schemes, and second brand networks. Each of these instruments permitted the companies to fine-tune their response to local outbreaks of price competition. The issue is whether these practices were any more than innocuous responses to local conditions.

The behaviour of Shell is particularly important because, by its own admission, it was one of the major influences on the market (Document # 34519)[253] and, along with Imperial Oil, the price leader in marketing. Throughout the late nineteen sixties and early nineteen seventies, Shell consistently attempted to move prices upwards. For instance, in its spring appraisal for 1969, Shell noted that it intended to push ahead with the trend to higher marketing margins that it had established in 1969:

> "With regard to the *volume/price relationship*, we determined that we would endeavour to improve unit revenues even at the risk of losing some volume growth. It had become increasingly apparent that the market leader (Imperial Oil) was not prepared to take an aggressive position in trying to improve prices. With our objective clearly established, we introduced price increases in all markets and although at times major competition was not too quick to follow, we were successful in making the majority of the price increases stick. As a result of these adjustments motor gasoline prices in December 1969 were higher than 1¢ per gallon over December 1968."
>
> (Document # 32916, May 26, 27, 1970, Shell)[254]

Because of its leadership role in increasing branded prices, Shell's reaction to the unbranded or independent market is important because Shell was generally viewed by the industry as a market leader.

Shell recognized that the major threat to its policy lay in the independent sector and not generally from the majors. In commenting on the majors' policies, Shell noted:

> "Any price cutting by Refiners' brands appears to have done [sic] only on a micro-market basis in reaction to Independent brand pricing."
>
> (Document # 36947, June, 1973, Shell)[255]

Up until the late nineteen sixties, the independents had not unduly threatened the branded network and had been readily contained; that is, their influence had primarily been restricted to peripheral areas of the urban centres:

> "*The pressure on retail prices* by independents, particularly in selective markets on the periphery of urban centres, continued and seriously limits our growth potential in these areas."
>
> (Document # 32920, May 26, 27, 1970, Shell)[256]

But by 1972, the retail/wholesale price spread available to the independents had increased to 18 cents per gallon as a result of the price of branded gasoline being forced upwards (Document # 34768).[257] Containment of the independents became more difficult. Referring to the unbranded share of the market, a Shell memorandum noted that it had grown to a size where it was threatening disruption of the branded sector:

> "The market can normally accommodate sales through this route to a ratio of about 10% without too much disruption, but the level has now gone as high as 15% and is growing."
>
> (Document # 34355, August 19, 1971, Shell)[258]

That the process of constraining the independents had become more difficult for the majors was evidenced by the fact that the independents began to change their pricing policy in mid-1971. They no longer felt they had to price at a set discount from the majors and began to widen this discount. As Shell indicated, they began to price in relationship to their costs:

> "Indications are that the pricing policies of the unbrandeds are different than that which we have experienced heretofore. Their posted pump prices seem to be arrived at by a build up from cost and expenses with a modest profit added on — this is irrespective of the major brand pricing in the area."
>
> (Document # 34357, August 12, 1971, Shell)[259]

The independents had begun to diverge from their policy of maintaining a traditional discount — a policy forced on them by the disciplinary price wars of the early nineteen sixties. Given Shell's own perceptions of the cost advantages of independents, this event presaged difficulties for Shell's attempts to establish or to maintain high retail prices. Shell, for instance, noted that independents could afford to price 10 cents per gallon below the Shell brand because their costs were lower in four areas:

"(i) 0.7 CPG ADVANTAGE IN FEDERAL SALES TAX (BASED ON A PERCENTAGE OF THE COST WITH DEALER TW AT A HIGHER LEVEL THAN SELLING PRICE TO DISCOUNTER).

(ii) 2.8 CPG ADVANTAGE IN OUT-OF-POCKET COSTS IN THE FOLLOWING AREAS:

(a) 0.7 SAVINGS IN MAINTENANCE COSTS AND PROPERTY TAXES (DUE GENERALLY TO A LOWER CAPITAL BASE AND DISREGARD OF IMAGE).

(b) 1.5 CPG SAVINGS WITH LIMITED OR NO ADVERTISING AND CREDIT COSTS.

(c) 0.6 CPG SAVINGS IN SALES AND ADMINISTRATIVE OVERHEADS.

(iii) 4.0 CPG SAVINGS IN CAPITAL EMPLOYED IN FACILITIES AND WORKING CAPITAL.

(iv) 4.5 CPG SAVINGS IN DEALER MARGIN."

(Document # 34520, Undated, Shell)[260]

With these cost advantages, the independents' change in pricing policy began to create wide margins between the branded and unbranded segment. In turn, this tended to depress major brand pump prices:

> "Pricing policies of the unbranded price leaders have generally depressed retail pump prices in their marketing area."
>
> (Document # 34479, July 10, 1969, Shell)[261]

In response to this price competition, Shell adopted a three-tiered set of policies. It moved heavily into car-washes — a policy that would "permit the

capital-strong marketer to maintain himself against pure gasoline commodity selling" (Document # 28384).[262] It also established a second brand network. Finally, Shell selectively lowered brand prices using a consignment or temporary allowance programme in areas where independents operated.

In the case of Shell, these policies were introduced not with the intent of stimulating but with the intent of reducing price competition. The situation that the company faced was not brought on by the independents' acquisition of surplus gasoline at distress prices. While the availability of low cost surplus gasoline may occasionally have stimulated local competition, the problem that Shell and the other majors encountered was more general. Shell recognized that it was facing the entry of a more efficient form of marketer. These marketers could expand because of their ability to earn profits while at the same time charging lower prices than the majors. Temporary allowances, consignment and second brands were used to allow Shell to compete with these new marketers in areas where independents first developed while, at the same time, maintaining higher prices elsewhere.

The pribrand network was the primary instrument chosen to combat the independents. It is quite clear that its establishment was aimed at this group of marketers. For instance, in referring to independent gas bars, Shell's Coordinator of Retail Sales noted:

> "This type of activity causes overall price deterioration and loss of brand market share. We feel that one of the most effective ways for Shell to market in such an environment is to establish 'Concubine' outlets."
>
> (Document # 34553, January 8, 1971, Shell)[263]

But this was not the only strategy recognized as being an efficacious method of combating independents. Lower branded prices were envisaged to be an integral part of the programme. For instance, one course of action considered by a Shell Task Force Report in 1969 was to:

> ". . . tight price . . .retail outlets through invoking maximum resale price policies supported by advertising . . .. Support this by aggressive price policies in domestic as well as in commercial and industrial markets aimed at some market penetration to back supplies into the competitors' retail market and induce him to support our lower retail price policy. In reasonably short order (1 to 2 years) many unbrandeds and regional marketers would be in financial trouble and vulnerable to aggressive buyout policies."
>
> (Document # 38500, September 19, 1969, Shell)[264]

Shell felt a two-pronged approach of meeting the independent with the private brand and of reducing branded prices on a selective basis would soften up the independent sector.

These practices were meant to protect and to perpetuate marketing inefficiencies in Shell's distribution system. The marketing policies created systematic discrimination among markets and among dealers; they were imple-

mented with the objective of confining a price disturbance to as small an area as possible. Shell's prime objective was not the introduction of a new more efficient marketing system. Such a policy would have been a normal competitive response to the demonstrated public acceptance of independents. Instead, through the use of various judiciously applied methods of price discrimination, Shell attempted to slow the expansion of the low priced independent sector by controlling its growth.

Controlling the spread of price competition was not Shell's only purpose for the introduction of temporary allowances, consignment, and second brands. Shell also intended its policies to increase, in time, the prices in those areas where independents had established themselves. By lowering prices to the levels set by these new marketers, Shell expected to be able either to eliminate the independents or else to discipline them sufficiently to permit a price restoration. Shell, therefore, displayed the motivation normally attributed to a predator.

The overriding objective that was set for both Shell's private brand and its support programmes was an increase in prices. Representation in the private brand sector and the use of temporary allowances to narrow the difference between branded and unbranded prices was seen to be key to a price restoration. This is indicated in the following excerpt from a Shell strategy document:

> "Since instituting our price restoration programme last August 25th we have enjoyed some very positive results. We knew at the time, however, that we would perhaps have to reinstitute a price support programme some time later, with the hope that we would not have to support as widely nor as deep as heretofore.
>
> "We have also embarked on a plan to narrow the brand and unbranded prices in the market as previously discussed with Messrs. Menzel and Benson. *The reinstitution of TVAs has this plan in focus. . . .*
>
> "We foresee that some time in the second quarter of 1972 we will again lead a restoration. *At that time we hope to be strong enough in the pribrand sector to effectively* raise the price level there."
>
> (Document # 58546, December 23, 1971, Shell, emphasis added)[265]

It is clear that all of these policies were continuously used together to move prices upward. Shell in 'Canadian Retailing Prices in the Seventies' indicates that:

> "WE WILL CONTINUE TO TRY TO LEAD PRICES UPWARD
> — THROUGH REMOVAL OF BRANDED SUBSIDIARIES. [sic]
> — PRICE LEADERSHIP IN THE PRIBRAND SECTOR.
>
> -INCREASING WHOLESALE PRICES TO PRIBRAND INDEPENDENTS.
>
> BUT WE HAVE DECIDED THAT WE WILL MAINTAIN OUR MARKET POSITION REGARDLESS."
>
> (Document # 34775, Undated, Shell)[266]

These objectives are spelled out in greater detail in the middle of 1973. In a guideline of 'Pricing Strategy', the District Sales Managers had outlined for them the policy they were to follow. This was:

"BRANDED FULL SERVICE

1. ELIMINATE ALL PRICE SUBSIDIES AS SOON AS COMPETITIVE CONDITIONS PERMIT:
   —FOLLOW MAJORS' LEADS PROMPTLY
   —LEAD OURSELVES WHERE PRACTICAL
2. DEVELOP TACTICS TO ELIMINATE PERSISTENT PRICE POCKETS

. . .

PRIBRAND

1. GENERALLY MATCH PREVAILING UNBRANDED MARKET.
2. *USE AS UPWARD PRICE LEADER"*

(Document # 58587-8, July 4, 1973, Shell, emphasis added)[267]

While Shell's policies were aimed against the independents, the importance of its actions must be set in a wider context of concerted action by the majors. In later sections, it will be demonstrated that Shell was not unique — that the other firms adopted monopolistic practices with similar objectives. It has already been argued that the majors consciously attempted to coordinate their policies. An illustration of this behaviour can be found in the care a company like Shell took to avoid price competition with the other majors. In the following letter from the Vice-President of Marketing to all Regional Managers, the importance of this policy and its success is described in detail:

"There is very little that one can say about retail gasoline pricing in general except that it is one of the most vexing problems that we in marketing have to face. In Canada particularly there can be no generalizing as we operate in a regional environment which defies any comparisons between areas.

"*In spite of the serious deterioration we are experiencing in certain of our markets, however, it has amazed me the way the majors have endeavoured to hold the line and not indulged in widespread price wars which most of us remember from the early 1960's. This is particularly more amazing in view of the chaotic pricing conditions which have gripped the United States market over the past year.*

"While much has been written on pricing in recent years, I found the article 'Price Antics: How They Disrupt' which appeared on page 39 of the August National Petroleum News somewhat enlightening. I, myself, have my fingers crossed and I am sure you have too, that we won't have to face the problem which confronts our colleagues in the United States. While the article tends to be somewhat specific, I think you will find on completing it that you have a pretty good picture of what some

of the problems are in the United States and with a reasonable degree of luck and, of course, intelligent management, we may be able to exert sufficient influence to prevent a repetition in Canada. The reference in the article to company initiated price deterioration to achieve volume objectives is to my mind the first step to economic chaos and I would hope no responsible marketer in Canada would consciously initiate such a scheme.

"*I recommend this article for your consideration and suggest that it may well be in order to ensure that those responsible for retail pricing in your Region are fully aware of the content.*"

(Document # 32926, August 18, 1970, Shell, empashis added)[268]

The lack of price competition among the majors and their disciplinary reaction to the independents permitted gasoline margins to be held for most of this period at inordinately high levels. Shell itself recognized this when a report to its parent on its own marketing practices was made; the parent organization concluded that other Shell companies would probably adopt a different strategy and that their strategy, as opposed to that used by Shell Canada, would involve "realistic pricing of the Shell brand":

"The meeting [in England] concluded that the Shell Canada approach to price flexibility (Pribrand) is not generally applicable elsewhere; most companies will prefer the alternatives of car wash, cross-merchandising premium offers, promotions together with *realistic* pricing of the Shell brand."

(Document # 32677, July 14, 1972, Shell, emphasis added)[269]

The following sections outline in greater detail the marketing methods that Shell introduced in order to counter and to discipline the independents. The focus is on the intent as well as the effects of the price discrimination and predatory practices that Shell directed at the independent sector.

(b) *Temporary Allowances*

Key to the contention that temporary allowances were used to affect the performance of the market in a detrimental fashion is evidence:

1) that Shell perceived independents to be a threat because of their superior efficiency;

2) that Shell reacted to this group by implementing temporary allowances.

A number of Shell studies recognized that the independents possessed a price advantage because of their superior efficiency. For instance, the following document indicates that the difference between conventional and 'pribrand' (independent) pump prices was the result of the lower operating and investment costs of the independent. In commenting on the relative efficiencies

of conventional dealers as opposed to the independents, a Shell study, 'Pribrand in Ontario', noted:

> "Typical pump price spread is 9.00 c.p.g.
>
> (Costs as defined herein include operating costs, overheads, and profit/investment charges.)
>
> "Lower unit operating costs, investment charges and dealer margin of the Pribrand outlets is the key (18.00 c.p.g. versus 9.00 c.p.g.).
>
> "These lower unit costs result from:
>
> - Multiplier effect of high volume generated by selling 9.00 c.p.g. below the market. As a result, unit cost drops rapidly.
>
> - Additionally, independent Pribrand outlets are characterized by:
>
> Lower Investment — Lower standards
> — Gasoline facilities only.
>
> Salary or commission operated
> Low overheads — no credit cards, adv.
>
> - Independents product cost is about the same level as our transfer price. This is some 7.5 c.p.g. below DTW (24.50), the price charged to the branded operator."
>
> (Document # 30778, Undated, Shell)[270]

The result of the lower prices offered by the independents, as outlined above, was a steady growth in their market share in the early nineteen seventies. It was this growth that concerned Shell. As the following document indicates, the temporary allowance system was used to combat this:

> "In recent years with the rapid growth of the unbranded marketers and the widening of the spread between branded and unbranded prices, the common prevailing price has come under increasing pressure — largely because of the inherent weakness in a one price system which fails to take into account differences in location, facilities, added services, type of operation, costs, etc.
>
> . . .
>
> "*A frontal attack is required but unfortunately we are not in a position to launch it because of established practices and the inefficiencies built into our vast existing network*. Our level of profitability is not high enough at the majority of our existing outlets even given present DTW [dealer tankwagon] prices. *An 'across the board' price reduction is not the answer. In view of this we feel that our existing DTW and TVA [temporary voluntary allowances] structure should be retained for lease and DL/OD [dealer lease/own dealer] accounts*."
>
> (Document # 35410, January, 1973, Shell, emphasis added)[271]

This Shell study recognized the advantage of the use of temporary allowances to counter the independents as opposed to a general price cut. Compared to a general price decrease, temporary allowances promised to limit

Shell's revenue loss. When the policy was implemented, therefore, the area where subsidies were given to Shell dealers was defined in as narrow a fashion as possible. Since the objective was to contain the zone of price disruption and to prevent it from spreading to other markets, a narrow definition of the trade area where the subsidy would be available was adopted. In 1971, a policy directive from the Coordinator of Retail Sales of Shell Oil (R.J. Benson) was sent to all regional managers. This memorandum stressed the concern that, in setting up temporary allowances, the trade area designated for the provision of subsidies be as small as possible:

> "Needless to say, . . . the object [of T.V.A.] is to contain the zone of reduced unit proceeds within as small a compass as possible."
>
> (Document # 38563, January ll, 1971, Shell)[272]

A similar concern was expressed later in that year when the District Sales Managers were told that support was to be implemented on an "extremely selective" basis. Written after Shell had removed temporary allowances in order to lead an industry price increase, the Retail Sales Manager, Central Marketing Region informed the District Sales Managers:

> "We recognize that there are areas where the Shell brand is at a distinct disadvantage because of our pricing posture of no TVAs. We are now prepared to entertain support proposals for those areas so affected. We do not wish to precipitate a wholesale depression, and *we suggest that you be extremely selective in your recommendations*."
>
> (Document # 58547, December l4, 1971, Shell, emphasis added)[273]

While Shell's objective was to restrict the use of temporary allowances to areas of independent activity, the implementation of this policy raised some problems. It was difficult to establish compact price zones that would only compete with the independents. Urban markets could not be divided neatly into mutally exclusive zones. No matter how tightly zones were defined for subsidy purposes, stations elsewhere tended to be affected by a decrease in prices. As a result Shell developed the concept of variable pricing or 'feathering' for different zones. With 'feathering', the amount of subsidy offered by Shell was progressively reduced as the zones moved further away from the lowest price (and greatest subsidy) area.

The way in which Shell implemented both temporary allowances and 'feathering' is described by Shell's Vice-President of Marketing (Mr. C.F. Williams) in a memorandum sent to Shell International Petroleum Company (S.I.P.C.):

> "l. A trade area is defined as that area which provides the trade of the station or within which 2 or more Shell stations are competing for the same trade. Other Shell stations outside this trade area may be influenced by the pricing in the trade area, even though they are not in direct competition.

2. The second group of stations are deemed to comprise a second trade area in which price reductions may not have to be as great as in the first.

3. In this way 'feathering' can be accomplished within the legal constraint that competing stations must be offerred products under like terms."

(Document # 34419, March 21, 1973, Shell)[274]

'Feathering', then, was no more than a form of price discrimination. Recognizing that the elasticities of demand in different areas were a function of the cross-elasticities across geographic areas, Shell implemented a scheme of price discrimination. In and by itself, price discrimination is a monopolistic practice and a manifestation of the monopolistic situation which the majors had created. Equally important, its very use is indicative of the degree to which most trade areas in urban centres could not be totally segregated one from another. As such, any attempts to eliminate competition in one area by the majors would have been detrimental to whole urban markets.

This point is important since evidence shows that Shell's system of price discrimination, which was accomplished via temporary allowances and 'feathering', was meant to reduce the spread of competition. A policy directive sent by Shell's Coordinator of Retail Sales to Shell's regional managers stated:

"... - it may happen that Shell dealers in a trade area where Shell prices have not been adjusted find some of their customers migrate to Shell sites in the adjoining trade area where Shell prices have been reduced.

"If this occurs in measureable terms it may become necessary to 'feather' the price in the adjoining area which so far has been untouched. The degree of 'feathering' will depend on the degree of severity of the migration and on the degree of inconvenience the motorist has to put up with in the migration. *Needless to say, the endeavour — as far as possible should be to avoid the 'feathering' reaching the level of the Shell price reduction in the main affected trade area, since the object is to contain the zone of reduced unit proceeds within as small a compass as possible.*"

(Document # 38563, January 11, 1971, Shell, emphasis added)[275]

Therefore, the system of temporary allowances was devised to respond to competition from unbrandeds in such a way as to minimize the impact on the general price structure.

Throughout this period, Shell discussed other policies that would also have served to reduce the spread of the price disruptions engendered by the independents.

In a memorandum from the Retail Sales Manager, on December 23, 1970, it was recommended that a study be undertaken to explore the implications of the restructuring of the existing price zones (Document # 58629).[276] The traditionally large zones would be broken down into "a number of smaller price zones in order to minimize the cost in meeting a particular depressed price situation and to minimize the risk of spreading the price depression to otherwise

stable areas" (Document # 58628).[277] With compact pricing zones, the tankwagon price could have been reduced directly rather than having to rely upon the implementation of temporary allowances.[1] However, Shell's objectives were the same in this case—"to minimize the risk of spreading the price depression to otherwise stable areas."

The issue is whether this and other policies served to lessen competition. In one sense, the adoption of 'feathering' and the restrictions placed on the areas where temporary allowances were granted can be regarded as methods used for optimal price discrimination. Normally, the ability to price discriminate is attributed to a lack of competition and not the reverse. However, in this case, Shell's constant emphasis on the need to confine the spread of 'price pockets' and to reduce the risk of the lower price spreading to new areas implies more than just a passive role for its price discrimination scheme. For the explortation of market power depended upon the skill with which a price discrimination scheme could be devised. First, such a scheme would have to contain the independents; secondly, it had to be constructed so as to prevent competition among the majors from breaking out.

Traditionally, price discrimination or predation is discussed within the context of a monopoly model. And most examples are generated within this context. *In Rex v. Eddy Match Company Limited et al.* (1951), the Quebec Court of the King's Bench found that Eddy Match, primarily through the use of 'fighting brands', had engaged in predatory policies to entrench its monopoly position. Unlike the match industry of that period, however, the firms operating in the petroleum industry found it more difficult to develop price discrimination or predation schemes. In the gasoline marketing sector of the petroleum industry, firms intent on disciplining or meeting the price of an independent marketer had to take account of the probable reaction of other large firms in the industry. Therefore, the search for an optimal instrument for price discrimination involved a careful evaluation of the instrument least likely to undermine the stability of the oligopoly.

For instance, in 1972, Shell's Vice-President of Marketing, described how temporary allowances could be used against the unbrandeds and indicated concern that Shell's price discrimination scheme not be misunderstood by the other majors:

> "We recognize that in a few deep discount pockets a 44.9 price would possibly serve our purposes better, but we are concerned that the market may misread our intentions inasmuch as no majors are currently pricing below 46.9. . . ."
>
> (Document # 33062, June 8, 1972, Shell)[278]

---

1. Implicit in this recommendation was the recognition that Shell granted subsidies in a smaller area than a price zone, i.e., that it discriminated among dealers who were in competition one with another.

Shell was afraid that a decrease in price in one market would be interpreted as an attempt to draw business away not only from the independents but also from other majors and would precipitate a general price war. Avoidance of competition among the majors was a prime consideration in devising responses to the independents. This is implied by the following quotation taken from a letter sent by Mr. C.F. Williams, Shell's Vice-President of Marketing to the regional marketing departments:

> "In spite of the serious deterioration we are experiencing in certain of our markets, however, it has amazed me the way the majors have endeavoured to hold the line and not indulge in widespread price wars which most of us remember from the early 1960's. . . .company initiated price deterioration to achieve volume objectives is to my mind the first step to economic chaos and I would hope no responsible marketer in Canada would consciously initiate such a scheme."
>
> (Document # 32926, August 18, 1970, Shell)[279]

Therefore, temporary allowances like the other disciplinary instruments that were used had to be implemented in a fashion so as not to cause a breakdown in oligopoly discipline.

Shell's various reactions to the independent sector were meant to protect its branded network. To this end, temporary allowances were meant to do more than just prevent competition from breaking out among the majors. Shell's objective was to slow the growth of the independent sector and to effect a price restoration. Consistent with this is evidence to indicate that the senior marketing personnel appreciated that the Shell allowance schedule had built into it an incentive to increase prices as quickly as the situation warranted. In December of 1970, Shell's Retail Sales Manager, in commenting on temporary allowances, noted that:

> "This approach is used by Shell and other marketers . . .it requires a contribution from these dealers in the form of reduced margins and thus establishes more clearly the dealer's obligation to shoulder a portion of the cost. *This in turn provides a built-in incentive for dealers to move back to normal pricing as soon as the competitive situation allows.*"
>
> (Document # 58629, December 23, 1970, Shell, emphasis added)[280]

It could be argued that the temporary allowance schedule that created this "incentive" was no more than a way in which to share losses from temporary price reductions. But this argument merely emphasizes the fact that Shell, in the face of entry by admittedly more efficient marketers, only planned to meet their lower prices on a temporary basis. Shell's overall policy was aimed at increasing independents' prices and restoring the old 'equilibrium' to the market. This objective is particularly striking in Shell's development of a second brand or private brand network.

(c) *Second Brands*

The second counter offensive taken by Shell to the development of independent marketers involved the creation and expansion of a second brand network. In 1969, Shell began consideration of the development of a low-priced second brand network. At that time Shell and other large vertically integrated companies were facing "pressure on retail prices" caused by independents:

> "*The pressure on retail prices* by independents, particularly in selective markets on the periphery of urban centres, continued and seriously limits our growth potential in these areas."
>
> (Document # 32920, May 26, 27, 1970, Shell)[281]

In examining this situation, Shell considered the conduct of the other large integrated companies. These companies had chosen, in some cases, to react with the brand and, in other cases, to use a second brand as a "fighting brand". In commenting on this situation in 1969, Shell noted that:

> "Esso, through Home and its subsidiary Econo are expanding in the unbranded market. Esso's Champlain brand is used *as a fighting brand when required*. Gulf temporarily dropped some business in Ontario but remains a prime controller of a significant volume priced below majors. Texaco continues to be a major wholesale supplier to unbrandeds. Shell, once significant in B.C./Manitoba as a supplier to unbranded markets has only played on the fringes in Ontario and Quebec."
>
> (Document # 38497, September 19, 1969, Shell, emphasis added)[282]

After this assessment, Mr. George Bevan, (eventually to become V.P. of Marketing) recommended that Shell:

> "Change strategy to supply, acquire and operate an unbranded chain on a selective basis."
>
> (Document # 38504, September 19, 1969, Shell)[283]

Subsequently, Shell initiated the development of second brand stations. In 1969, Shell acquired an independent network of service stations known as Beaver. The acquisition of Beaver gave Shell eight second brand stations centred in the southwestern Ontario market as a basis for their second brand networks. Eventually this chain was expanded to other areas. In Quebec, Shell's second brand stations were known as Alouette, Avanti, and Gas Mart; in Ontario, the second brands were Beaver and Gas Mart; in the West, the second brand was known as Savex. As Table 24 indicates, between 1969 and 1973, Shell's second brand sales grew from 1.8 to 7 per cent of its branded sales. The majority of these stations were located in Ontario and Quebec — the centre of independent marketer activity. For example, in 1972, second brand sales in Ontario accounted for over 11.9 per cent of all of Shell's branded retail sales versus 5 per cent for all of Canada (Shell, Return of Information).[284]

TABLE 24

THE GROWTH OF SHELL SECOND BRAND SALES

Shell's Sales	*1969*	*1970*	*1971*	*1972*	*1973*
Shell (MMG)	628	704	685	726	759
Second Brand (MMG)	11	15	20	42	53
Second Brand as a percentage of Brand	1.8	2.1	2.9	5.8	7.0

Source: Document # 35350, Shell[285]

Like temporary allowances, second brands were introduced as a method to implement price control and to prevent price erosion on branded sales. In effect, Shell's policy evolved a 'fighting brand' system similar to that, which they observed, Imperial was using. For instance, Mr. A.G. Seager, then Manager Eastern Marketing Region, commented on April 23, 1971, that the second brands which Shell had established were part of a two pronged strategy: "Part of the District approach to pricing in a given market — *fighting with concubine*, holding on the brand" (Document # 38478, emphasis added).[286]

Second brands, therefore, became another vehicle used to 'fight' the independents. Shell's second brand stations were established primarily in those markets where unbranded marketers operated. Shell would erect, or more often convert, a Shell branded station to a second brand station in a pocket of price activity as the Vice-President of Marketing at the time testified:

> "Q. When you opened up new Beaver stations, how was the decision arrived at as to where they would be opened?
>
> A. Generally in areas where the independents were making the most effect with their discounting."
>
> (Testimony of Mr. C.F. Williams, Vice-President of Public Affairs and Corporate Planning, Shell, Toronto Hearings 1975 Vol. III, p. 371)[287]

Second brands were developed as both a complement and a substitute for temporary allowances. They were meant to serve the same purpose as temporary allowances. The following quotation notes that both second brands (or concubines as Shell called them) and temporary allowances, were aimed at those areas where traditionally price tended to be lower:

> "In summary, it appeared that Eastern Region was not being adversely affected by unbranded activity except in small chronic pockets and in those, the concubine or T.V.A. solution was adequate."
>
> (Document # 28373, August 10, 1971, Shell)[288]

Second brands were chosen as a way to compete with the independents because, like temporary allowances, they promised to give Shell control over the

spread of competition. In 1972, Shell's Vice-President of Marketing wrote Shell International Petroleum Company describing the use to which Shell's second brands were being put:

> "While Shell Canada have not as yet achieved all of their objectives with pribrand operations, it is still considered a preferable choice to the high cost of using the Shell brand to compete directly with independents. The latter would involve the real possibility that majors' depressed prices would spread out from the price pockets across broad areas of the market."
>
> (Document # 34449, December 20, 1972, Shell,)[289]

In a Shell study of the Ontario market served by independents (Document # 30760-82),[290] Shell noted that independents had captured a significant portion of the Ontario market because the majors' margins had increased by some 3 cents per gallon since 1967 (Document #30777),[291] and because the independents' costs were some 9 cents per gallon less than the conventional service stations that were the backbone of the majors' networks. Figure 21 outlines Shell's evaluation of the comparative economics of the two forms of marketing. The basic Shell strategies outlined in the study and the assessment of each is presented below:

1. Strategy—"CONTINUE TO DEVELOP AND PROMOTE FULL PRICE BRANDED RETAIL NETWORK INCLUDING INNOVATION"

   (Document # 30766, Undated, Shell)[292]

   Assessment—"In isolation leads to erosion of market position."

   (Document # 30779, Undated, Shell)[293]

2. Strategy—"REDUCE PRICE THROUGHOUT BRANDED NETWORK TO RETAIN MARKET POSITION"

   (Document # 30766, Undated, Shell)[294]

   Assessment—"Extremely costly — could mean $7 MM loss in cash income. Even more substantial to the S/S operation under a 40/60 split of price reduction"

   (Document # 30779, Undated, Shell)[295]

3. Strategy—"SELECTIVELY REDUCE BRANDED PUMP PRICES IN DEPRESSED AREAS THROUGH

   (a) TRADE AREA PRICING

   (b) CONTROLLED OPERATION"

   (Document # 30766, Undated, Shell)[296]

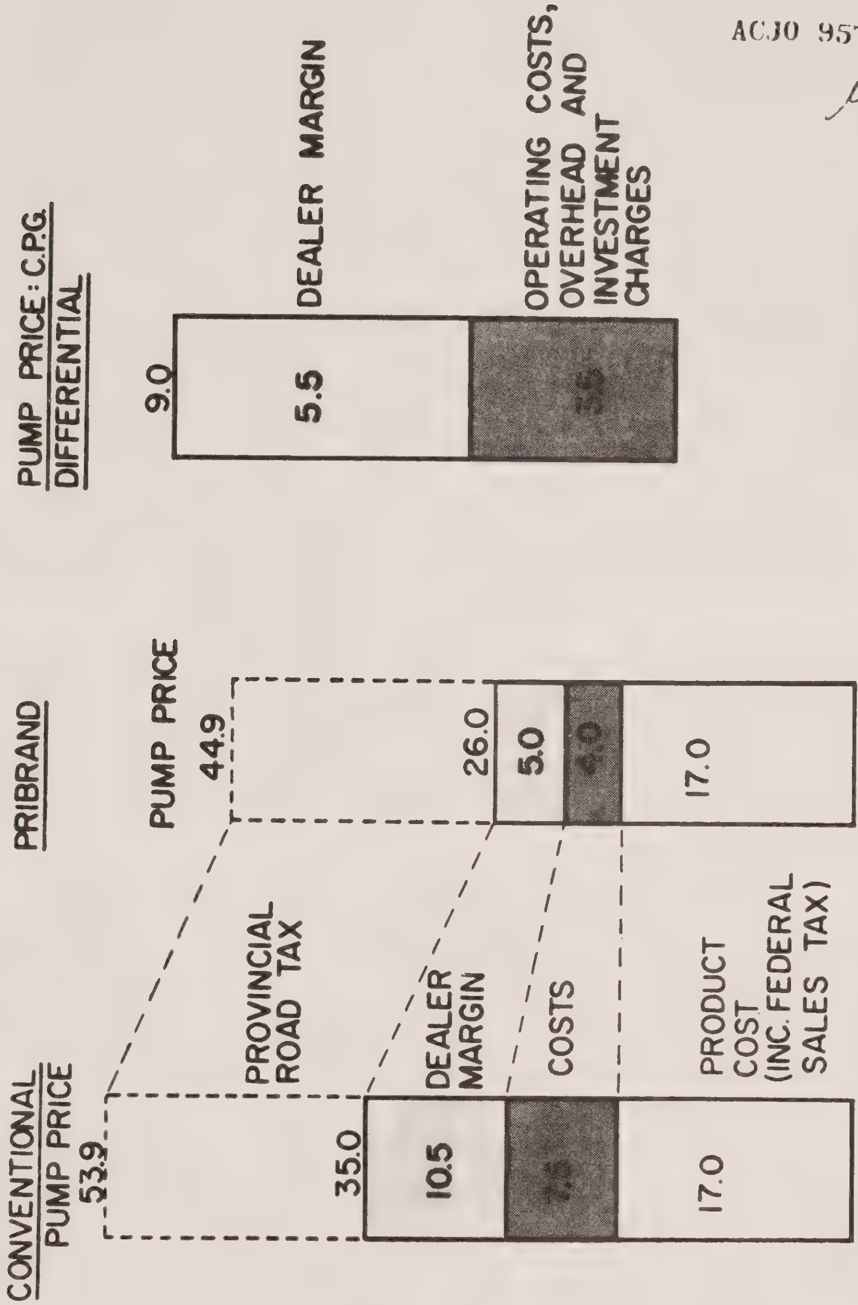
   Assessment—"(a) Difficult to confine because of overlapping trade areas/station groupings of competitors. Could lead to blanket reduction. . . .

   (b) Feasible only under severe localized conditions when dealer might request. Otherwise, a Shell imposed loss of income to dealer."

   (Document # 30779, Undated, Shell)[297]

FIGURE 21

COMPARATIVE ECONOMICS - C.P.G.
CONVENTIONAL VS PRIBRAND OUTLET



(Reproduction of Document #30765
'Figure 21' added)

ACJO 9572F

30765

Thus Shell recognized that with the cost advantage that the independents enjoyed, the continuation of the approach of conventional stations — either pricing to cover costs, or pricing with the unbranded independents — would lead either to a loss of market position or a substantial loss in revenues. The third alternative — the use of selective price reductions (using temporary allowances)—was less costly but was characterized by a major shortcoming: its use could potentially lead to a general price reduction. It was here that second brands offered an advantage over the traditional forms of price reduction such as temporary allowances or consignment. They were more selective.

While the use of second brands to compete with the independents had the same general purpose as temporary allowances, second brands offered some advantages in localizing Shell's response to competition. For instance, Shell recognized that the trade areas of competing majors might overlap. If this was the case, a temporary allowance programme implemented by Shell, if met by its competitor, would spread the area of price erosion. As a study done by Shell in the early nineteen seventies noted:

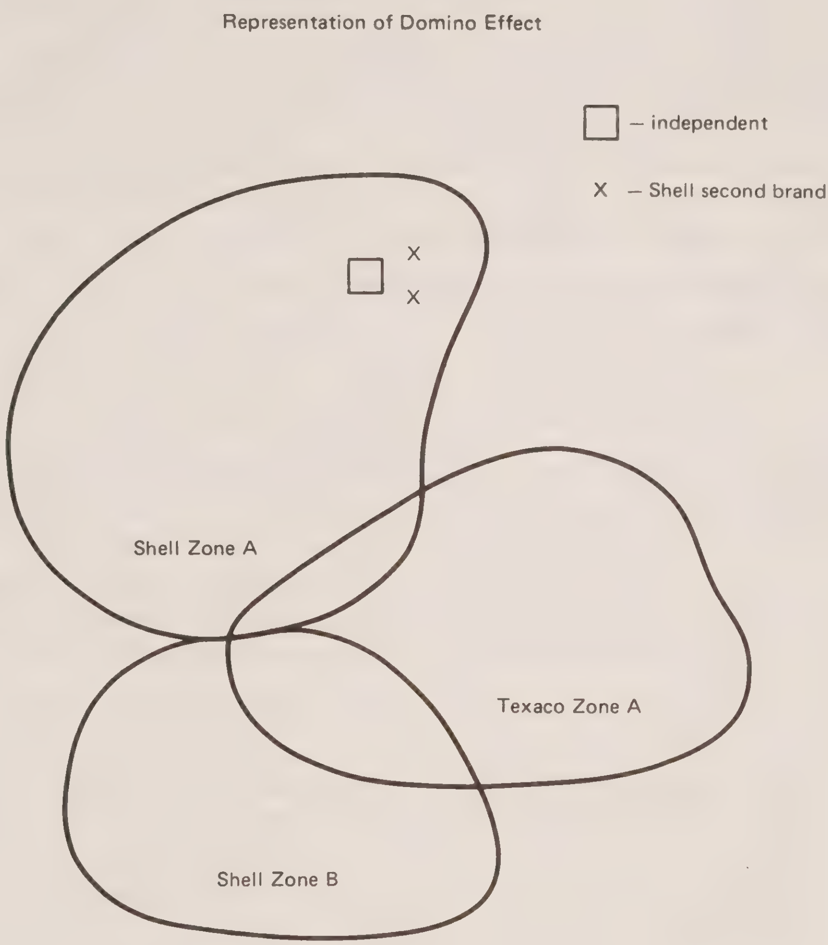
> "Competitors trade areas (each competitor may differ) superimposed in Shell areas will not necessarily coincide. This overlapping nature leads to a domino effect when trade area pricing introduced — i.e., eventually spreads out to all areas."
>
> (Document # 30780, Undated, Shell)[298]

On the other hand, Shell noted that if it established a second brand station directly beside the independent, it could "compete directly with competitive Pribrand operations" in the area (Document # 30780).[299] By localizing its response to an area smaller than the normal zone used for granting temporary allowances, Shell felt that it was less likely to provoke a response from the other members of the oligopoly.

The problem can be described using the representation of trade zones of Shell and another major (say Texaco) that is depicted in Figure 22. If Shell, to fight the independents in Zone A, subsidized all its branded stations therein with temporary allowances, it felt that it would likely be met with a similar response by Texaco. Since Texaco's Zone A extended beyond Shell's Zone A into Shell's Zone B, Shell, to protect its own stations in Zone B, would have been forced to reduce prices in Zone B. As a result, the original price reduction in response to the independent would then have spread across a wide geographical area. If instead, Shell established a second brand immediately beside the independent, then Shell felt that Texaco would have been less likely to reduce its prices in its own Zone A because none of the branded Shell stations therein would have decreased their prices.

While the primary objective of both temporary allowances and second brands was to contain the price disturbance to as small an area as possible, second brands had two advantages. First, since the price reductions were more localized under second brands than under a temporary allowance scheme, it was

FIGURE 22



(BASED ON CHARTS IN DOCUMENTS # 30768-30769)

less costly to Shell. But equally important, discounting with the brand by using temporary allowances threatened to broaden the areas of price disturbance because of competitive responses from other major firms. Therefore, even more than with temporary allowances, the 'second brands' approach was a form of price discrimination that was meant to prevent the oligopoly's status quo from being disturbed.

A fourth policy that Shell considered as a response to the growing importance of the independent private brand was the maintenance of "market position through sales to independent private brands" (Document # 30766).[300] Shell had always tried to be selective in such sales. Shell's general policy was to lean toward unbranded sales only to those who had demonstrated by their investments that they were likely to be "responsible marketers" (Document # 34723).[301] The disadvantages of any extension of sales to independent marketers were listed in a Shell study as threefold:

"[1]— Considerable uncertainty — short-term contracts

[2]— *Loss of market control*

[3]— Adverse effect on Branded Network."

(Document # 30779, Undated, Shell, emphasis added)[302]

Maintaining "control" was an important consideration which led Shell to participate in the second brand network itself. As has been demonstrated, maintaining "control" using second brands was synonomous with maintaining prices at high levels. A similar intent can be found in Shell statements on its policy with respect to the wholesale market. A 1972 document noted that sales to private brand marketers who upset the market were to be limited:

"Our strategy to maintain objective market share, as presently stated, is:

. . .

"— sales to responsible Private Brand Marketers like Simpsons/Sears, The Bay, etc., who have a substantial investment in the market.

"— limiting sales to the suppliers of the 'Deep Discount' or 'Black Flag' private brand operators, currently upsetting the market, to situations where temporary surplus supplies must be disposed of."

(Document # 30648, May, 1972, Shell)[303]

Another example of Shell's preference for dealing with the type of marketer which did not price substantially below the Shell brand is found in the Minutes of the Regions' Managers Meeting (January 4, 1972):

"Discussion reaffirmed that in the unbranded gasoline market at the refinery rack we should concentrate determinedly on customers who had substantial own investment at stake and who, by way of this investment and other factors such as quality image, could be considered 'responsible' marketers."

(Document # 32170, January 4, 1972, Shell)[304]

Therefore in place of sales to independents, Shell created its own second brand network with the objectives already outlined. In October 1969, the Shell Vice-President of Marketing argued that the expansion of their own second brand was essential if this market was not to 'conflict' with the primary brand network.

> "As one of our considerations, which I understand you are also considering, is the possibility of extending a Beaver type operation to other marketing areas, it may be well worth while at this time to consider the formation of a joint company with a third party — say C.F.M. — that *would operate an unbranded operation in which we as co-owners would have a say in the operation, primarily to ensure that it is not conflicting with our branded operation.* This operating interest is essential for the same reasons that we prefer to run a wholly-owned concubine rather than sell at long discounts to Unbrandeds to flaunt the price and contribute very little to improving the service station business in general."
>
> (Document # 32833, October 30, 1969, Shell, emphasis added)[305]

The objective of controlling the independent segment of the industry by establishing second brands is also evidenced in the following statement made by Shell's Vice-President of Marketing in 1971:

> "There is a substantial segment of the motoring market which appears to be motivated by price/commodity alone. In recent years, we have begun to participate in that market at the refinery loading rack. This brings with it a variety of problems not the least of which is the total lack of control over what happens with the product after it has been sold to bona fide buyers at the rack.
>
> "It occurs to us that the only effective way of participating in that market may be to enter the unbranded operation directly on a permanent basis."
>
> (Document # 3219l, October 25, 1971, Shell)[306]

These excerpts suggest that the "control" that Shell attempted to develop via entry into the second brand market was intended to reduce price competition in marketing. In August of 1972, Dominion Motors (Domo) had requested gasoline from Shell for delivery in Shell's Western Marketing Region. Even though Domo had been only 'moderately' discounting gas in Winnipeg, Shell was concerned that any supply granted them in Vancouver would be priced at the lowest end of the market. In the same month, the General Manager of Marketing wrote the Western Regional Manager noting that supply was available to cover Domo's requirements but that it might be better to use it in Shell's own second brand network:

> "We have reviewed the supply position relative to providing Domo with some 6-7 MM gallons Mogas at each of Winnipeg and Vancouver, and there appears to be no problem in providing the volume involved. However, as a result of our Murray Bay discussions it would probably be as well to examine direct Shell Pribrand Marketing — particularly in Vancouver — in the style of 'Beaver', as an alternative to being a supplier to Domo."
>
> (Document # 32964, August 29, 1972, Shell)[307]

One month later, the General Manager, in commenting upon this example, expanded upon the effects of "control". "Control" engendered by second brand operations, he observed, permitted Shell to slow the spread of price competition:

> "In our deliberations re Domo we seem to have regarded them as a 'moderate' discounter — at the 4 cent level. We have stayed with them in Winnipeg and are considering their expansion in Vancouver with Safeway. Now we have to face the possibility that in Vancouver they'll adopt a different pricing profile — or be forced to it by Safeway in the face of Martin's competition. . . .
>
> . . .
>
> "It has become something of a conviction in both CMR and EMR that the control of discount retail pricing is best kept in our hands and it is something you might keep in mind for Vancouver. *The implementation of a Gas Mart, Regent, or other pribrand tends to defer the onset of branded price competition by the majors, until such time as a Gulf, BP or Fina decides to price with their brand. In the past we have gained as much as 2-3 years before price erosion of the level now taking place in Ontario and Quebec in the branded network.*"
>
> (Document # 32981, September 19, 1972, Shell, emphasis added)[308]

Therefore "control" of the discount sector was synonomous with the objective of maintaining the price structure that had supported the conventional network and preventing prices from moving down to the level set by the independent sector.

The fact that Shell's second brand policy was able to delay the spread of price competition was only partly the result of its being especially tailored to reduce the threat of competitive reaction from the other majors. It was also used to reduce the spread of the independent marketers. As such its use may be described as a form of *disciplinary price discrimination.* The object of Shell's selective price discrimination scheme was to reduce the growth and extension of independent marketers. Of course, such an objective need not have been destructive of competition. It might be argued that temporary allowances and second brands were developed to satisfy a different market — the 'price conscious' consumer. And should Shell have actively experimented with these forms of marketing to see how widespread this market was, then its actions could be construed as a legitimate response to the growth of independents.

On the other hand, if these policies had as their objective the elimination or confinement of weaker but not necessarily less efficient competitors, then they were injurious to the competitive process. Such a result could have been accomplished by predatory actions — policies which saw the majors pricing with the independents regardless of whether the majors could cover their costs. Or they may simply have been the result of the majors establishing a pribrand of their own beside or close to an independent with the intent of disciplining the independent until he posted higher prices. In the latter case, the pribrand instrument need not have exhibited any prolonged period of unprofitability. The

major could have drawn off sufficient customers from the independent to cause the latter's profitability to fall as its costs rose. If the independents could be taught that they would always be disciplined in this manner unless they followed a specific pricing policy, then the major would have been able both to lead up the independents' price and to discourage new entrants. As shall be demonstrated, Shell's second brand policies contained elements of both predatory and disciplinary action as described above.

It is often argued that, in the absence of barriers to entry, the use of predatory pricing or the implementation of disciplinary price discrimination is unattractive; if prices are raised above competitive levels, entry will occur. This argument ignores the likelihood that these practices are designed to enhance entry barriers. The prospect that an existing firm is prepared selectively to engage new entrants in a price war may, in and by itself, persuade potential competitors to forego entry. Shell intended its second and third brand networks to serve this function — to discourage the entry of new independent marketers. In particular, Shell envisaged that aggressive pricing policies on the part of its own second brands would discourage entry by independent marketers. Shell observed that because an independent marketer would be met by the creation of a Shell second brand station pricing "at any new price bottom" this would discourage entry into the market. For instance, in a May 1972 memorandum, Shell's General Manager of Marketing stated that:

> "The branded marketer has the additional choice of participating in the discount market through a concubine operation. Such action will accelerate the process of denying the multiplier advantage to the independent discounter. *It will also discourage new entrants if it is clear that strong, marketers will price at any new price bottom.*"
>
> (Document # 30691, May 23, 1972, Shell, emphasis added)[309]

In a 1973 Retail Task Force Study, this position was argued again. One of the objectives of second brand operations was to discourage entry of unbranded marketers. This report noted:

> "It is recommended that Shell participation in the unbranded market should be achieved through Pribrand operations rather than as a supplier of unbranded retail chains even though it is not any more profitable. . . .
>
> "The advantages of direct Pribrand operations are:
>
> . . .
>
> "(2) it will establish a clear vested position which will give us greater degree of influence in this market and possibly discourage new entrants."
>
> (Document # 35448, January, 1973, Shell)[310]

The fact that Shell implemented a 'policy' of discouraging entry by using second brands against independents is confirmed by a document concerning the objectives and strategies of Shell's second brand operations and by oral testimony from the Coordinator of Retail Sales. In a January 8, 1971 memorandum to all of Shell's regional managers, the Coordinator of Retail Sales stated:

> "Consideration of the following *objectives* must be given when entertaining the concubine technique in a defined market trade area:
>
> . . .
>
> (4) To discourage other independents from entering the area, ..."
>
> (Document # 34553, January 8, 1971, Shell)[311]

In oral testimony, the same executive, when presented with this document, stated that this constituted Shell Oil policy and strategy with regard to their second brand operations:[1]

> "Q. Was this [Document # 34553-5] sent out as a policy statement to the region managers of Shell?
>
> A. No, it was sent out as a strategy, if you will; the policy of using concubines had already been in existence.
>
> Q. Yes, but was this, then, the strategy which Shell had in force?
>
> A. Yes."
>
> (Testimony, R.J. Benson, Manager, Eastern Marketing Region (formerly Co-ordinator, Retail Sales, Toronto), Shell, Toronto Hearings, 1975, Vol. IV. pp. 430-1)[313]

It is important to consider the argument that Shell's objective with regard to discouraging independents may have been no more than an intention to serve a separate price-conscious market. Since entry is reduced as much by keeping prices at competitive levels as by seeking to create entry barriers through the use of predatory threats, it is important to ascertain which course of action Shell intended. It is evident that the objectives that Shell set for its second brand operations indicate that its intent was to discourage entry in a fashion that was detrimental to the price-conscious segment of the market.

For instance, after assessing the costs of using general price cuts, sales to independents, and selective price cuts, the study of the 'pribrand' market in Ontario, then outlined the objective of Shell's pribrand. These were listed as:

> "1 PROTECT SHELL'S POSITION IN THE RETAIL MARKET.
>
> 2 RECOGNIZE THE EXISTENCE OF A 'PRICE SENSITIVE' SECTOR IN THE RETAIL MARKET.
>
> 3 *PROVIDE A MEANS TO INFLUENCE PRIVATE BRAND PRICE*
> *- LOWER INDEPENDENT PRIBRAND THROUGHPUTS BY DILUTION*
> *- INITIATE PRICE RESTORATION*"
>
> (Document # 30770, Undated, Shell, emphasis added)[314]

---

1. Another Shell document explaining the objective of second brands as being the discouragement of entry of independent marketers is Document # 30653.[312]

While Shell intended to "recognize" a "price sensitive" group of consumers, it did so because it wanted to develop a strategy that would increase the price in this sector.

The same objective — to move unbranded prices upwards through the disciplinary use of second brand operations — is substantiated by another study entitled "Pribrand — Objective and Strategies" (Document # 34549-52).[315] Foremost amongst the objectives that were envisioned for Shell's second brand operations was the following:

> "1) IMPROVE PRICE LEVELS — NARROW SPREAD
> - DILUTE U/B MARKET
> - RESTORATION WITH BRAND"
>
> (Document # 34549, January 11, 1973 Shell)[316]

Clearly, it was Shell's objective to try to force prices upward. The 'Pribrand in Ontario' study contains an explanation of how this was to be done. Using a map that illustrates an area of independent activity where a Shell second brand station has been newly established, Shell observed:

> ". . . one Shell outlet has been converted to Pribrand to compete directly with competitive Pribrand operations in the area. *Concept here to draw off volume from other Pribranders and then market upwards.*"
>
> (Document # 30780, Undated, Shell, emphasis added)[317]

Shell implemented this strategy by establishing two different types of second brands. In order to operate in areas where "Discount Pricing is well entrenched" the Beaver brand was used in eastern Canada (Document # 30781).[318] Where "'Price Pockets' develop periodically", Gas Mart was used (Document # 30781).[319] However, in both cases, it was Shell's objective to use these brands to force prices upward. For instance, Shell refers, in this same study, to Beaver as only "semi permanent" and to Gas Mart as required for "short-term conversion in price pockets" (Document # 30773).[320] Gas Mart's operating technique, as outlined, was to "meet independent pribrand price — then lead upwards" (Document # 30773).[321]

The strategy that Shell adopted is outlined in a Shell memorandum sent by the Coordinator of Retail Sales to all Region Managers in 1971 (Toronto Hearings, 1975).[322] Each of the region managers was ordered to use the following strategy with regard to second brands (concubine technique):

> "a) Rebrand a carefully selected Shell unit to Concubine ensuring that as much as possible, any Shell brand recognition disappears.
>
> b) Do not market Shell branded products in the outlet unless other major brands are also made available. (Econo principle.)
>
> c) *Only rebrand those outlets which you would be prepared at a later date to rebrand back to Shell.*

d) Do not operate bays. It should take a most serious reason to open one or any.

e) Operate on a 'C' agency basis (in case of Beaver, salary).

f) Adopt an aggressive pricing policy, but not predatory. Price with the lowest, especially to get established.

g) Ensure that marketing mix focuses on the sale of gasoline with great emphasis on pricing. Be best in pump island service, merchandising and promotion.

h) When rebranding an outlet, subtly and in a planned manner, endeavour to transfer the service station business (automotive repairs, etc.) and the loyal Shell brand and credit card customers to neighbouring Shell Stations.

i) *After establishing the concubine in the market place as the leader of the independents or close to it, try leading the price up. If unsuccessful, go right back down. Repeat the process. Be sure to be best in pump island service, promotion and merchandising at all times.*

j) *If necessary, consider supporting other Shell Stations in the market area with a T.V.A. This will afford the opportunity of giving the competition a two-fold jolt as well as protecting our own dealers.*"

(Document # 34554, January 8, 1971, Shell, single emphasis added)[323]

Once again, the temporary nature of Shell's response is emphasized. Only those stations that could be rebranded easily at a later date were to be debranded. In addition, Shell instructed its managers to be aggressive — pricing with the lowest unbranded but offering the best service. While it did not intend to go below the lowest unbranded, this policy was predatory in nature since, as we shall see, Shell's second brand costs were not low enough to permit it to function profitably using this policy. Therefore, this policy could only be considered as a temporary device for the establishment of higher prices. Of additional importance is the way in which Shell intended to combine both second brand pricing and temporary allowances to give the independents "a two-fold jolt". While second brands had certain advantages over temporary allowances, there clearly were circumstances where Shell intended to use both tools. Finally, the evidence establishes Shell's intent to raise prices using this policy.

While Beaver and Gas Mart were employed in the Central Marketing Region as a disciplinary instrument to drive unbranded prices upwards, this was not the only region where Shell chose to employ this tactic. In western Canada Shell established the Savex brand to accomplish the same purpose. A position paper from the Retail Sales Manager in the Western Marketing Region to head

office subsequent to the 1971 memorandum presented above outlined both the objectives and the intended strategy that were being adopted in the West:

> "*PRIBRAND STRATEGY*
>
> *Objectives*
>
> . . .
>
> — Dilute the private brand market in deep discount areas with the express intent of price restoration.
>
> . . .
>
> *Strategies*
>
> . . .
>
> 3. In accordance with the operating guidelines attached, to utilize existing open or closed outlets as required to achieve the second objective above, e.g., dilution of unbranded share of market in deep discount areas and seek price restoration. This 'gas mart' vehicle designed for short term duration will be developed *initially* in Calgary and Edmonton."
>
> (Document # 38520-2, March 2, 1972, Shell)[324]

In Shell's Central Marketing Region, the disciplinary strategy was fully operative by late 1972. For instance in September of 1972, the Retail Sales Manager of Shell's Central Marketing Region discussed the expansion of the Gas Mart second brand network. He stated that the Gas Mart network would be increased from 15 to 31 locations with the primary objective of these second brand stations being "to narrow the price differential between major and private brands":

> "Judiciously use the Gas Mart brand with competitive pricing to recover volume losses in markets suffering from short term price depression. The Gas Mart network will be increased from 15 to 31 locations, adding 3.0 MM incremental gallons. *On restoration of lost volume, attempts will be made to narrow the price differential between major and private brands.*"
>
> (Document # 38655, September 13, 1972, Shell, emphasis added)[325]

In his comments on this statement at hearings, the Retail Sales Manager elaborated on how Shell attempted to "narrow the price differential." Gas Mart would enter the market and price with the lowest unbranded in the area (which in all likelihood would result in undercutting the more moderately priced discounters). After pricing with the lowest unbranded, Gas Mart would

move its prices upwards attempting to move unbranded prices. If this failed, then Gas Mart "would go back down again":

"Q. . . . Would you attempt to meet the competition that goes on, as far as price is concerned?

A. With a Gas Mart?

Q. With a Gas Mart.

A. Our strategy would be never to price lower than the lowest. *If necessary, price with the lowest and after gaining some volume, to try and lead the price up.*

Q. What exactly do you mean by 'lead the price up'?

A. Going from a price, say, of 40 cents to 41 cents.

Q. Why was this done?

A. To see if the competition would follow you.

Q. If they did not follow? What then?

A. *After a period, depending on the marketing conditions, more than likely if they did not follow, we would go back down again.*"

(Testimony, Mr. G.N. Beauregard, Head Office Co-ordinator of Operations and Budgets, (formerly Retail Sales Manager, Toronto), Shell, Toronto Hearings, 1975, Vol. IV, p. 458, emphasis added)[326]

Gas Mart was not the only private brand which was used in this fashion. Shell also used Beaver to try to force prices upward as the following testimony by the former Retail Sales Manager indicated:

"Q. With respect to Beaver, what was the pricing policy?

A. It was basically the same because we gave more service and we seemed to be able to gain better or bigger volume than the Gas Mart. We could try and lead the price a little bit earlier."

(Testimony, Mr. G.N. Beauregard, Head Office Co-ordinator of Operations and Budgets, (formerly Retail Sales Manager, Toronto), Shell, Toronto Hearings, 1975, Vol. IV, p. 459)[327]

These statements refer to the manner in which prices were raised. Equally important is the manner by which Shell's pribrands were used to discipline the independent. The key to the effectiveness of Shell's strategy was its policy of immediately meeting competition and of pumping large volumes to dilute the independent market. In 1971, Shell attempted to use its second brands to effect a price restoration. The following document shows what the Beaver policy had been up to this time and noted that if Beaver was to succeed, it had to price right with the independent unbrandeds:

"As you know, it was Don Plumb's policy to meet price competition within the hour. Windsor marketers knew they could not expect an edge on Beaver. That was still true until August 25th. Beaver had seven million gallons to put on the line if anyone tried to undercut us."

(Document # 58631, October 5, 1971, Shell, written by E. Wende, Shell's Private Brands Manager in Central Marketing Region to the Central Marketing Region's Retail Sales Manager, marked "Personal and Confidential — Pricing Structure — Beaver — Gas Marts" — and containing notation "p. 5 No copies exist of this letter other than mine for potential discussion purposes")[328]

Equally important, the private brand manager goes on to state that Shell's approach to restoring prices was right but that a longer time period would be required to establish the right conditions for doing so. A time horizon of "several years" was suggested as being required:

"I believe that Beaver-Gas Mart pre-price restoration policy of pricing on the nose was right. I suggest that we should be prepared to price competitively for several years if the economics of price/volume are to work to narrow the pump price differential to more realistic levels. This would appear to best serve Shell's long term interests."

(Document # 58631, October 5, 1971, Shell)[329]

In effect, this was the policy that was sent out in late 1971 and implemented in 1972. The same strategy continued in effect in 1973. Shell continued to draw off business from the independents so that it could get the unbrandeds to follow its upward price moves; its ultimate objective was the establishment of a 'satisfactory difference' between branded and unbranded prices. In Shell's *Suggested Price Strategy of 1973*, a difference of some 3-5 cents per gallon was stipulated as the objective for its price leadership function. This study, described Shell's continuing second brand strategy as:

"1. GENERALLY MATCH PREVAILING UNBRANDED MARKET.

2. *USE AS UPWARD PRICE LEADER.*

3. USE RETAIL BASICS TO GAIN COMPETITIVE EDGE OVER OTHER UNBRANDEDS.

4. AIM AT MAXIMUM UNBRANDED DISCOUNT OF 3 TO 5¢
   — UNBRANDED SELF-SERVE 5¢ MAXIMUM
   — UNBRANDED FULL SERVICE 3 TO 4¢"

(Document # 28375, Undated, Shell, emphasis added,[330] also Document # 58588, July 4, 1973, Shell)[331]

Shell felt that not only would this reduce entry of new firms but also that it would control the growth of independents. As such the spread of the low priced segment of the market would be curtailed. For instance, in a May 1972 Shell Canada paper entitled "Discussion of Motor Gasoline Objectives/Strate-

gies", Shell outlined its belief that its brand was worth only 2 to 4 cents per gallon. At any greater differential, the independent sector would grow at the expense of the brand. Shell stated:

> "*Brand Value* — The brand value of gasoline rests on factors such as location and coverage, perceived company reputation and standards of service, availability of a wide range of services, and perceived product quality differential. It is felt that the sum of these values sustains a 2 to 4 cpg differential in the market at present, i.e. *at this differential there would appear to be a 'growth equilibrium' between branded operator and unbranded discounter.* In prime locations this value may be as high as 5 or 6 cpg."
>
> (Document # 30649, May, 1972, Shell, latter emphasis added)[332]

Of course, with Shell's perception of a 9 cent per gallon cost differential between its conventional branded network and the independents, the equilibrium it wished to establish meant that second brands had to be used aggressively to discipline the existing independents; they had to be forced to adopt the prices that Shell felt would establish a "growth equilibrium". Shell's policies, therefore, were not intended to permit the market to find its own equilibrium mixture of low cost and high cost marketing outlets. Shell, instead, adopted a set of policies whose intent was explicitly stated to be one of preventing these forces from operating.

(d) *The Profitability of Shell's Second Brand Operations*

The previous section has reviewed the objectives and the operating strategy of Shell's second brand stations. Shell's strategy, as we have seen, was to price with the lowest unbranded and then attempt to move prices upwards. If this failed, the second brand would then lower prices once again to meet the lowest independent marketer. At the same time, the level of service and the appearance of the second brands were maintained at levels that matched or exceeded the unbranded independents. A memorandum by the General Manager, Marketing, described this situation as of 1972:

> "1. Beaver is being run like a Hess — high level of service, gasoline orientation, clean premises;
>
> 2. Hess has, *over time*, achieved a reputation which enables it to retail between 2 and 4¢ below majors, absorb the discount in reduced dealer margin, and outpump the adjacent majors;
>
> 3. Beaver is being priced at the other end of the pricing spectrum against the unbrandeds — P.R. Martin, XL etc. — the 'dirty Dicks';
>
> . . ."
>
> (Document # 32995, October 26, 1972, Shell)[333]

That Shell provided a high level of service at its second brands but at the same time priced at the low end of the market suggests predatory behaviour.

Certainly, Shell's management was aware that a determination of whether their policy was predatory required consideration of not only the price being charged but also services offered relative to the independents (Document # 32993).[334] The evidence already adduced as to Shell's motivations supports the conclusion that Shell's actions were predatory. Shell did not introduce second brands just to satisfy a price-conscious segment of the market. They did so in order to draw off volume from the independents; to eliminate some independents, contain the growth of others; and to lead prices in this segment upwards. Motives and strategy such as this are characteristic of predatory market practices. The history of the profitability of Shell's second brand network during this period provides additional confirmation of predation.

It should be pointed out that a finding of low or negative profitability for yearly operations is not a necessary condition for predation. Predation, to be successful, needs only be a credible threat. It need not be practiced so frequently that losses will be reported in annual reports. Shell's very policy to meet independents and then to lead prices upward indicates that if it had been successful in disciplining the independents, then its second brand need not have been continuously unprofitable. However, the competitive situation that the majors faced in the early nineteen seventies was sufficiently severe to suggest that predation would, at least in the short run, have led to losses by the majors' second brands. Shell's experience confirms this.

One of the problems that faces an evaluation of the profitability of a sector of a vertically integrated industry is the validity of transfer prices that have been used between divisions. Fortunately, this was generally not a problem with one of Shell's second brands — Beaver. Shell was concerned about the possibility of illegal price discrimination and, until 1973, adopted the policy of selling to Beaver at wholesale prices similar to those found in the unbranded market. Shell's other second brand networks such as Gas Mart, Apollo, and Avanti were operated as part of Shell's marketing department and here the same concern was not as evident. In testimony, the individual who was at the time General Manager (Marketing) for Shell commented:

> "Q. Now, the second brand, when they bought, or when they were supplied with gasoline by Shell, did they buy at the tankwagon price?
>
> A. We did not sell to Avanti or Apollo. It just was not that kind of transaction.
>
> Q. You mean because Shell owned it?
>
> A. Yes.
>
> Q. How about Beaver?

A. Beaver we sold to.

Q. Did you sell to Beaver at the tankwagon price?

A. A discount price competitive with the independents, a price at which independents were buying at.

Q. Would you sell, then, to Beaver at the same price as you sold to an independent that you sold to?

A. Generally, yes.

Q. Did you ever sell at a different price?

A. Ever is a long time and all I can talk about is since 1972. The intent since 1972, I believe it is the fact, was to sell at a price — a discount no greater than at which we were selling to the independent."

(Testimony of A.G. Seager, General Manager, Marketing, Shell, Toronto Hearings, 1975, Vol. I, pp. 166-7)[335]

There is also evidence to show that during this early period discounts to Beaver were changed during the year to reflect changes in the wholesale market. For instance, in a memorandum dated May 4, 1970, the Vice-President of Marketing states:

"We agree with your recommendation to increase the discount that we have been extending to Beaver Service Centres Limited, retroactive to January 1, 1970.

"We have recently had occasion to bid on unbranded volumes of the same magnitude as Beaver and believe that the current discount which these types of accounts can obtain are of the order of 6½-7¢ off the tankwagon price.

"I am returning the approved SPR authorizing this change in discount and Mr. Kappler's letter to you for your files."

(Document # 32908, May 4, 1970, Shell)[336]

The issue then is whether Beaver with Shell's intent to price this network with the lowest of the unbrandeds, to dilute the independents' volume, and to move prices upwards was unprofitable and was recognized as such by Shell's management. Both questions can be answered in the affirmative.

Unlike Gas Mart, Alouette, Avanti, and Savex, Beaver Service Centres Limited was a separate company — a subsidiary of Shell Canada. As a result, financial statements for Beaver exist for the years 1969-73. In 1968, Shell created Beaver Service Centres Limited which acquired the assets of

Beaver. A summary of Beaver's financial position for the years 1968-74 is provided in Column 5 of Table 25. These figures were attested to by a Shell official at the Hearings who agreed that they reflected "realistic losses" (Toronto Hearings, 1975).[337] As is evident, during the first full year of operation — 1969—Beaver Service Centres had a net loss of $94,375. In 1970, the net loss was $5,620; in 1971, it was $9,126; in 1972, it was $277,306.[1] It was not until 1973 that Beaver earned any profit. But this was the year that wholesale prices to independents went up dramatically and as a result so did retail prices. As is evident from Table 25, even though discounts in the wholesale market were decreased (Column VI), the discount to Beaver was not decreased during the year. This was contrary to previous practice, (see above) and, therefore, Beaver's financial statement for 1973 is no longer meaningful. In conclusion, during the period for which evidence exists to show Beaver's predatory intent, this second brand was operated at a loss.

TABLE 25

SHELL SECOND BRAND STATISTICS AND REPRESENTATIVE DISCOUNTS TO THE INDEPENDENT PRIVATE BRAND CLASS

Year	*No. of Stns.*	*Shell — to — Beaver Disc.* ¢/gal	*Beaver Vol* MMG.	*Profit/(loss)* $ M	*TC 020 Disc.* ¢/gal.	*TC 020 Volume MMG.* Ont.	Can.
I	II	III	IV	V	VI	VII	VIII
1968	7	—	5.7	8	—	?[1]	
1969	8	7.0	6.8	(94)	—	?[1]	
1970	13	7.0	8.4	(6)	6.84[3]	19.7	29.7
1971	16	7.0	11.9	(9)	7.4 [4]	17.5	41.5
1972	37	7.0	24.2	(277)	9.9 [5]	27.8	51.7
1973	45	7.5	30.6	738	3.5 [6]	51.9	104.9
1974	44 (a)	3.0 to 9/74	30.9[2]	257	3.0 — 9 mos.	53.6	99.3
	(b)	5.0 bal.			5.0 — 3 mos.		
1975	45	6.0			6.0		

Notes: 1) Records unavailable — recollection indicates nil.
2) Converted Beaver London to Shell — 1.2mmg.
3) C.F.M. — 10/70 — 6.84¢ discount — regular mogas.
4) Neal — 8/71 — 7.4¢.
5) C.F.M. — 10/72 — 9.90¢.
6) Sunys — 6/73 — 3.50¢.

Source: Exhibit #T-9, Serial #2583-4, Shell, Toronto Hearings, April 1975.[339]

---

1. It might be argued that new business ventures must expect to lose money initially. However, a handwritten comment on a document which outlines possible Shell strategies (Document # 34551)[338] for the pribrand network indicates that two years was the normal or acceptable limit for losses. Beaver's losses extended over a longer period.

Other evidence confirms the unprofitability of Shell's second brands. In Shell's Retail Task Force Study of January 1973, the profitability of Shell's new-to-industry stations (NTI) and redevelopments since 1969 was examined. These calculations are reproduced in Table 26. By January 1973, Shell operated 33 Beaver stations with an annual volume of 30.2 million gallons and 52 Gas Mart stations with a volume of 25.7 million gallons. From the column headed "price", it is evident that the price for "conv." (conventional) stations was 36.62 cents per gallon; while the price for Beaver and Gas Mart was 25.05 and 26.30 cents respectively. Partially due to these relatively low realizations, Beaver's cash/gross profitability was -9.7 per cent and Gas Mart was 1.2 per cent.

Table 27 provides a further breakdown of second brand profitability by second brand network and by market. Of the total of 85 second brand stations, only three were located in the Western Region in January of 1973. These were Gas Marts. Most second brand stations were located in Ontario and Quebec — the focus of independent activity. Illustrative of the difference in Shell's second brand price policies across markets is the fact that in the Western Region, the realized price for these Gas Marts was 31.62 cents per gallon while the realized prices for Beaver and Gas Mart in the Central Marketing Region

TABLE 26

PROFITABILITY OF SHELL STATIONS BY TYPE
CROSS CANADA INCLUDING GASMART AND BEAVER
January 1973

TYPE OF OUTLET	*# OF STNS*	*GALS (M)*	*PRICE (¢/gal)*	*PV AT 9% (M $)*	*CASH/ GROSS (%)*
GB	11	3560	35.63	−247.9	6.6
GB ROCW	4	1816	36.97	8.7	8.5
TUNNEL	41	27355	36.63	61.8	8.3
ATT TUNNEL	9	6910	36.96	−130.8	7.8
SS/WII	6	2310	32.79	−426.0	3.9
SS/CON	13	6370	34.66	173.6	9.4
SS/TUNNEL	5	4350	35.86	17.8	8.3
SS/ROCW	2	990	37.22	−29.2	7.6
CONV	65	21886	36.62	−2550.1	6.0
REST	12	4340	38.82	−309.5	7.1
CON STORE	1	500	36.90	−120.1	3.7
BEAVER	33	30150	25.05	−9475.3	−9.7
GAS MART	52	25693	26.30	−3263.5	1.2
CON ROCW	84	33194	36.67	−3901.7	5.9
DIAG	2	2000	36.38	−178.1	5.9
REBUILD	71	24458	37.21	−2639.4	6.1
TOTALS	411	195882	33.49	−23009.6	5.2

Source: Document # 35352, Shell[340]

TABLE 27

PROFITABILITY OF SHELL BEAVER AND GAS MART STATIONS BY REGION

ACROSS CANADA BEAVER & GASMART SUMMARY

TYPE OF OUTLET	*# OF STNS*	*GALS (M)*	*PRICE (¢/gal.)*	*PV AT 9%*	*CASH/ GROSS (%)*
BEAVER	33	30150	25.05	–9475.3	–9.7
GAS MART	52	25693	26.30	–3263.5	1.2
TOTALS	85	55843	25.63	–12738.8	–4.8

WESTERN REGION BEAVER & GASMART SUMMARY

TYPE OF OUTLET	*# OF STNS*	*GALS (M)*	*PRICE (¢/gal.)*	*PV AT 9%*	*CASH/ GROSS (%)*
GAS MART	3	1243	31.62	–51.5	6.8
TOTALS	3	1243	31.62	–51.5	6.8

CENTRAL REGION BEAVER & GASMART SUMMARY

TYPE OF OUTLET	*# OF STNS*	*GALS (M)*	*PRICE (¢/gal.)*	*PV AT 9%*	*CASH/ GROSS (%)*
BEAVER	33	30150	25.05	–9475.3	–9.7
GAS MART	23	15550	26.57	–1233.9	2.9
TOTALS	56	45700	25.57	–10709.2	–6.3

EASTERN REGION BEAVER & GASMART SUMMARY

TYPE OF OUTLET	*# OF STNS*	*GALS (M)*	*PRICE (¢/gal.)*	*PV AT 9%*	*CASH/ GROSS (%)*
GAS MART	26	8900	25.09	–1978.0	–1.1
TOTALS	26	8900	25.09	–1978.0	–1.1

Source: Document # 35449, Shell[341]

were 25.05 and 26.57 cents per gallon respectively. Either the Western Marketing Region did not have the same degree of price pressure as the Central Marketing Region or Shell was more aggressive in their second brand pricing policy in the Central Region. Finally, profitability as measured by Shell's "cash/gross" in the two main areas of unbranded activity — Ontario and Quebec — was negative. In the Central Marketing Region, the 33 Beaver

stations had a "cash/gross" of -9.7 per cent; in the Eastern Marketing Region the 26 Gas Mart Stations had a "cash/gross" of -1.1 per cent.

Shell summarized these results on the profitability of its second brand operations as follows:

> "To date we have *not* been successful in achieving *even a marginal profit in our Pribrand operations, (Exhibit 2), primarily because of high operating costs and low throughputs*."
>
> (Document # 35450, January, 1973, Shell, emphasis added)[342]

Statements by Shell management that Beaver and other second brands were being run at a loss confirm the validity of these figures. In 1971, Shell Canada provided summary information to the Shell company in Houston on the Canadian experience with second brands. In doing so, Shell Canada indicated that it appreciated the unprofitable nature of its second brand operations. For instance, in commenting on the extension of Beaver from the Windsor to the Hamilton area, the Shell office in Houston was informed that Shell Canada did not expect the operations to be profitable:

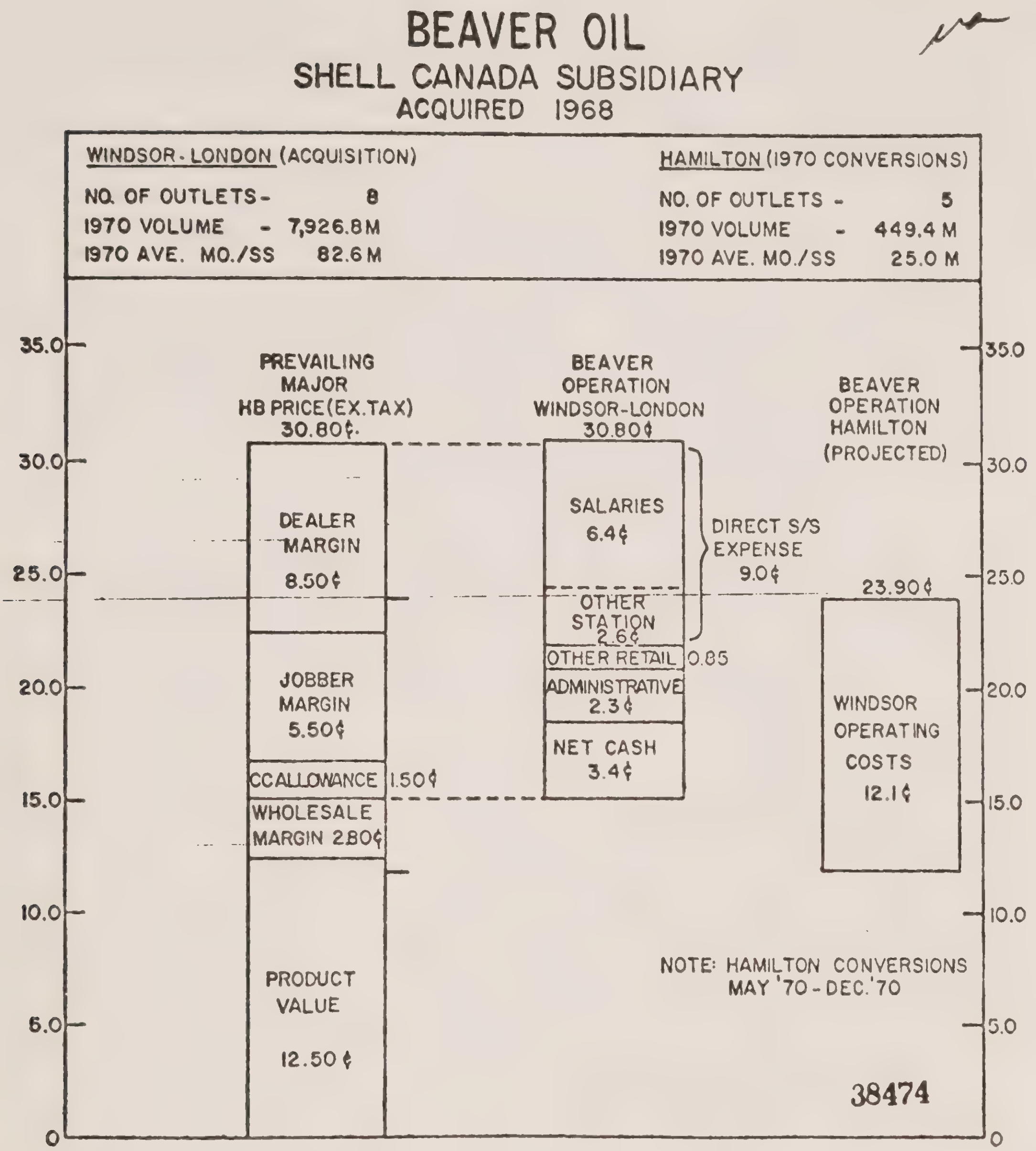
> "During the latter part of 1970 the subsidiary extended its operation into Hamilton with the conversion of five stations from the Shell brand to Beaver. Present indications are that the Hamilton operation will be unprofitable based on operating margins of 8.5 to 13.5 cpg and Windsor operating costs."
>
> (Document # 38472, Undated, Shell)[343]

Figure 23 indicates the reason Beaver's profitability in the new market was expected to change dramatically. In Windsor, Beaver was priced at the prevailing level of the majors and with its cost of 12.0 cents per gallon was able to make a profit. However, in Hamilton, its price level was envisaged to be much lower — at the independents' level — and Shell's realization would, therefore, be less than the product value (the transfer price). Similarly, this same study indicates that the second brands in Montreal were being subsidized at the retail level:

> "During 1970 Shell Canada established the 'Avanti' and 'Alouette' brands in the Montreal area.
>
> "The 'Avanti' single station operation is generating cash in excess of all out-of-pocket costs and making a contribution to overhead.
>
> "The 'Alouette' brand has been established at five former branded locations and presently fails to yield revenue equivalent to station operating expenses.
>
> "*The retail operation at the 'Avanti' and 'Alouette' stations is subsidized out of the wholesale margin.*"
>
> (Document # 38472, Undated, Shell, emphasis added)[344]

FIGURE 23

ACJ017254 D



(Reproduction of Document #38474
'Figure 23' added)

1007

Two years later, in the fall of 1972, other Shell documents indicate that the management was still fully cognizant of the profitability implications of their pricing policy. In a memorandum from the General Manager of Marketing to the Regional Manager in Ontario, it was noted that Beaver had been unable to operate profitably. In discussing the objectives of Beaver, the General Manager of Marketing stated:

> "In a recent letter to Barry Sleigh — you have a copy — we have talked in terms of being in the pribrand business as a Beaver, Stampede or whatever, instead of supplying an unbranded retailer such as Dominion Motors at discounts in excess of seven cents. In the event that we do indeed operate Beaver at less than 7-7.5¢ off DTW, then our guidance to Barry has some value. *However, the quick examination of Beaver's 1971-72 performance done here — and enclosed — doesn't confirm our ability to operate within that margin.* We'd like to share with you a thorough awareness of the reality of Shell's being capable of matching the operating cost performance of the unbranded retailers against whom we're using Beaver, Gasmart and the other pribrands in Eastern."

(Document # 32969, September 1, 1972, Shell, emphasis added)[345]

Shell's management was cognizant that its second brand price and service policy had inherent in it certain predatory aspects. In a memorandum written October 24th, 1972, the General Manager of Marketing commented that the original objective contained in the strategy directive on second brands could be described as being predatory. This directive, which had been sent to the regional managers, contained the following point:

> "(f) Adopt an aggressive pricing policy, but not predatory. Price with the lowest, especially to get established.
>
> . . ."

(Document # 34554, January 8, 1971, Shell)[346]

In discussing this, the General Manager noted that this strategy might be interpreted as being predatory:

> "(f) predatory pricing may be a function not only of price, but of added values — not excluding service, credit, premiums;
>
> . . ."

(Document # 32993, October 24, 1972, Shell)[347]

Thus Shell recognized that a price matching strategy may, in and by itself, be predatory depending on the cost level of attached services. That Shell was indeed following a policy of providing costly services but pricing with the independents is borne out by a subsequent memorandum written by the General

Manager of Marketing. He confirmed that Beaver was being run with a "high level of service" but being priced at the "other end of the pricing spectrum" and as a result could not "operate within the unbranded margin" (Document # 32995).[348] The General Manager of Marketing stated:

> "Yesterday's discussion has left me with a lack of resolution of the opportunity which pribrand/Beaver might represent. As I recall the multiplicity of points which were made, the following highlights stand out:
>
> 1. Beaver is being run like a Hess — high level of service, gasoline orientation, clean premises;
> 2. Hess has, *over time*, achieved a reputation which enables it to retail between 2 and 4¢ below majors, absorb the discount in reduced dealer margin, and outpump the adjacent majors;
> 3. Beaver is being priced at the other end of the pricing spectrum against the unbrandeds — P.R. Martin, XL etc. — the 'dirty Dicks';
> 4. there is opinion, (not shared), that Beaver may be predatory in its pricing in that the value/cost of added services/promotional activities may be placing Beaver in a position where we are underpricing/overcosting the discount market;
> 5. *Beaver is apparently unable — at this point in time*, agreed — *to operate within the unbranded margin*. In this market a competitive discount would be 7.5/9.5¢ per gallon discount on regular/premium respectively. Can Beaver operate as a Profit Centre at this cost of product?
>
> . . ."
>
> (Document # 32995, October 26, 1972, Shell, emphasis added at 5.)[349]

Finally, in December of 1972, Shell's Vice-President of Marketing sent a memorandum to Shell International Petroleum Company (SIPC) concerning Shell's use of second brand networks. In outlining the rationale of these second brands, he noted that second brands were considered "a preferable choice to the high cost of using the Shell brand to compete directly with independents" (Document # 34449).[350] In addition, he observed that pricing at the independents' level with the Shell brand increased the chance of spreading the area of price disturbance outside of particular price pockets:

> "While Shell Canada have not as yet achieved all of their objectives with pribrand operations, it is still considered a preferable choice *to the high cost of using the Shell brand to compete directly with independents*. The latter would involve the real possibility that majors' depressed prices would spread out from the price pockets across broad areas of the market."
>
> (Document # 34449, December 20, 1972, Shell, emphasis added)[351]

However, while these second brands were the preferred policy instrument, he admitted that their profitability was "low":

"2. The operating costs of the pribrand sites have been such that although very good volume increases have been achieved, the prices have had to be so low that profitability has been low.

. . ."

(Document # 34448, December 20, 1972, Shell, emphasis added)[352]

Summary

The purpose of this section has been to piece together the documentary evidence relating to Shell's second brand operations. Their performance must be placed in the context of the stated objectives and strategies of Shell's second brand networks. The sum total of these objectives can be summarized as the protection of the branded network. This was to be accomplished by localizing competition, by discouraging new entry, and by increasing the price of existing firms until a growth equilibrium was established. Second brands were the vehicle used to accomplish this. The strategy, as described, was to create a "temporary vehicle" to "lead pribrand prices up" and to drive the independents out of business (Document # 34374).[353] Shell's second brands were meant to price with the lowest unbrandeds, to dilute the independents' volume, and then to lead prices upwards. If unsuccessful, this process was to be repeated. That Shell implemented this policy and that evidence exists to demonstrate that this network was unprofitable is proof that Shell followed a predatory policy meant to reduce competition in the marketing sector.

(e) *An Example of Disciplinary Price Discrimination Montreal 1972*

It is sometimes argued that consignment and temporary allowances permit the large petroleum companies to support their retailers in the face of 'distress situations' that are caused by a temporary over-supply of product or the aberrant behaviour of competing dealers. With regards to the implementation of a second brand policy, the oil companies might also argue that these second brands were no more than a response to the growing segment of the retail market that was price-conscious. Previous sections have examined the rationale and objectives of Shell's temporary allowance and second brand strategies. Both documentary evidence and testimony obtained in the hearings on the objectives of these strategies indicates that Shell developed and implemented policies that were meant to discipline the independent marketer.

Much of the evidence adduced for this position has consisted of general policy studies of Shell's marketing techniques and directives to regional managers describing the operating strategies to be adopted. The following example illustrates how second brands were used in conjunction with the introduction of consignment selling to 'discipline' unbranded marketers of

gasoline and a regional marketer — Petrofina — whose response to the unbrandeds was, in Shell's opinion, likely to cause a general collapse of the price structure.

Three important characteristics of Shell's disciplinary price discrimination scheme have been outlined in the previous sections. First, the scheme was implemented in such a fashion as to maintain discipline within the oligopoly. Secondly, entry by the new type of low-cost marketers was meant to be discouraged. Finally, the growth of existing independents was meant to be constrained and their price moved upwards to levels that would maintain an artificial growth equilibrium between the two groups of marketers. Each of these contributed to confining or to restricting the price disturbances caused by the independent marketers to within as small an area as possible. The Montreal gasoline market in the spring of 1972 shows how Shell used both consignment and second brands to accomplish these goals.

In the spring of 1972, unbranded retailers had 163 outlets and possessed 10.3 per cent of total retail sales in the Montreal market. Most of their sales were confined to particular pockets of the Montreal market — Laval, Montreal North and the Sherbrooke St. East/Papineau area. In certain competitive pockets, retail pump prices ranged from 41.9 to 50.9 cents per gallon. Outside of these pockets, major brand prices in the Montreal area were stable at the 50.9 cents per gallon level:

"Unbranded retailers appear to be particularly concentrated in the affected areas, although in the total district territory they are not as large a force as in other metropolitan centres.

"This market [i.e. unbranded] constituted approximately 38 million gallons in 1971 or 10.3% of industry retail sales (up from 7.5% in 1970) with 163 outlets (up from 120 in 1970). Marketers break down as follows:

	% Share of Unbranded	No. of Outlets
Murphy	29.0	41
Calex	18.9	25
Golden Eagle	13.5	32
Major Concubines [i.e. Second Brands]	7.8	10
Others	30.9	55
	100.0	*163*

"*Price Levels*

Generally in the Montreal area, major brand prices are holding at 50.9 c/g. In the specific affected areas, prices range currently from 41.9 to 50.9. . . .

"The price weaknesses occur in identifiable pockets within the affected areas. While the aggregate 41.9-43.9 picture appears to prevail, there are continuous changes from pocket to pocket, some up, some down."

(Document # 32174-5, April 13, 1972, Shell)[354]

Shell had been successful in helping to curtail the growth of the independents in Montreal with its second brand system. But its success in continuing areas of price competition was threatened in early 1972 by a change in the pricing policy of one of the regional marketers — Petrofina. Petrofina had adopted a policy of meeting the lowest priced independent in the competitive 'pockets' even though Petrofina's station was a 'considerable distance from the original discounter'. As a result of the unbrandeds' and Petrofina's pricing policies, Shell's branded stations began to suffer. It was the expansion of these 'price pockets' that Shell decided to restrain:

> "In almost all cases, *the source of the discount can be traced to a single unbranded outlet*. The extent of the price cutting has been seriously amplified, however, *by Petrofina's apparent overreaction to the discounting.*
>
> . . .
>
> "*Shell has used Alouette rebrands* [Shell's second brand] *successfully to fight off unbrandeds, but* as soon as Fina comes down to meet the lowest price the Alouette units suffer significantly. Only the Avanti unit has held up reasonably well to Fina, possibly due to superior location and ethnic clientele.
>
> . . .
>
> "This [Petrofina's] overreaction takes two forms. Firstly, Fina meets and posts the lowest price. As the Fina brand could command a 2-3 c/g premium to sustain itself, Fina is yielding this premium and is drawing significantly from both the unbrandeds and from the other branded operators. In response, all the mini-majors have come down to meet Fina at the bottom. . . Secondly, Fina reacts at considerable distances from the original discounter. Whether this is a deliberate policy or simply an easy yielding to their dealers' clamors, *the effect is to create a much larger pocket than necessary to fight the original discounter.*
>
> "With the mini-majors 7-9 c/g off the major brands, Texaco has reacted to preserve their customers by spotting Fina no more than 3 c/g. . . . Gulf has adopted a more selective stance — they meet the discounters in some locations, they hold a limited premium in others. . . .
>
> "Only Shell and Esso are holding firm to 50.9 c/g throughout the area. . . .
>
> . . .
>
> "Fina's pricing policy and its consequences have had some effect on the unbrandeds' volume noticeably on Rachel Street. *In this regard, the attraction to and growth of the unbranded may have been stunted.*"
>
> (Document # 32175-6, April 13, 1972, Shell, emphasis added)[355]

While Petrofina's pricing policy of meeting the lowest independent even though their "brand could command a 2-3 c/g premium" may have 'stunted unbranded growth', Shell was concerned that Petrofina's policies would 'create much larger pockets than necessary to fight the independents'. In examining this problem, Shell considered a number of alternatives. First, Shell

observed that it could continue to price at the 50.9 cents per gallon level in the hope of containing the price disturbance to these selected areas. However, it noted: "We would then face closure of some outlets without enhancing the viability of the remainder" (Document # 32176).[356] The second policy alternative that was considered was a large scale price decrease at a number of service stations. This was rejected because it "would be extremely costly" (Document # 32176).[357] The third alternative considered was the increased use of second brand operations; however, second brands, while an efficient agent for price discrimination as long as price discipline for the major brand was maintained within the oligopoly, had a certain disadvantage in the face of Petrofina's behaviour. The purpose of second brands was to localize competition; since Petrofina had begun to spread the price pockets, reacting with second brands would have had a reinforcement and not a containment effect. Second brands, therefore, were to be used only where Fina stations had not collapsed the branded price structure:

> "The use of conversions to 'Beaver'-like operation would equally deny volume efficiencies to the deep discounters but the risk of spreading the price weaknesses could be substantial due to Fina's pricing posture. . . . Certainly, where the pockets, are reasonably isolated and there are no Fina stations nearby, the use of this tool should be considered."
>
> (Document # 32176, April 13, 1972, Shell)[358]

The course of action that Shell adopted involved the introduction of consignment selling at a select number of outlets. As is noted below, the purpose of the consignment programme was both to teach Fina that it could not continue its policy and to prevent price competition from spreading to the stable areas in Montreal. To supplement this consignment programme, conversion of a number of Shell stations to a second brand was recommended. These were to be used in the 'deepest' price pockets to discipline the independents if they should decrease their own prices in response to Shell's reduction. In turn, these second brands would then permit Shell to provide 'price leadership' in moving unbranded prices upwards:

> "In the absence of a foreseeable solution whereby the Shell network can sustain itself at 50.9 c/g in the affected areas of Montreal, another sustainable price level should be considered. This may be in the order of 48.9 c/g if mini-majors were pricing around 44.9-45.9 and unbrandeds at 42.9. . . . *In this way, the rest of the Montreal market can possibly be kept at 50.9 c/g.*
>
> "To achieve such a pricing situation, customers must be attracted back to the Shell units first *and the mini-majors, notably Fina, must realize that the majors cannot live with a continuing erosion of their volume to deep discounters*. This tactic would suggest a temporary dropping of Shell prices to 45.9 c/g at the affected outlets, . . .and an eventual pricing at 48.9 c/g. Esso may be expected to follow such a move as the only marketer left at 50.9 c/g.

"In order to minimize the risk of spreading the price weakness, it may be desirable to test such a tactic in some pockets first. . . .

"The use of Beaver-like operations should be considered for the one or two worst price pockets in lieu of Alouettes, *particularly if the deep discounters respond to the Shell brand move by cutting further. In this way, some price leadership may be attempted within the deep end of the discount market.* For this purpose, there would have to be a careful and deliberate selection of units, not a conversion of marginal Shell outlets in possibly poor locations."

(Document # 32176-7, April 13, 1972, Shell, emphasis added)[359]

"The proposed move requires re-introduction of gasoline consignments."

(Document # 32177, April 13, 1972, Shell)[360]

These policy recommendations were accepted and consignment was implemented at 21 service stations in the Isle de Laval, northeast and southeast areas of Montreal. This was done in such a way as to establish:

". . . three district control groups, comprising approximately:

(i) 5 units at 45.9 cpg meeting Fina

(ii) 8 units at 45.9 and 46.9 at 3 cpg above Fina

(iii) 8 units at 48.9 cpg and 3 cpg above Fina."

(Document # 32179, April 18, 1972, Shell)[361]

The policy directive from Head Office stressed that "*Every effort must be made to contain the disturbance within the prescribed areas*" (Document # 32180, emphasis added).[362] The recommendation concerning second brands was also accepted as one Shell service station was to be converted to a Gas Mart station in an area where no Fina station was operating. The intent of this policy action was bluntly stated as "*such [a] move would allow us to engage an independent pri-brand*" (Document # 32180, emphasis added).[363]

The memorandum instructing implementation of this strategy also recommended that "Dealer commissions need not be the same throughout" (Document # 32180).[364] Shell, therefore, intended to discriminate among their dealers. This was an important reason for the implementation of the consignment programme. For, as soon as it was decided that Fina's actions had to be met with the Shell brand, the preferred tool was consignment. The outbreak of competition engendered by Fina's reaction to the unbrandeds led to a situation where Shell wanted to tailor its reaction to areas smaller in size than temporary allowances would allow. In effect, Shell wanted the localization of reaction permitted by second brands, but also had to use its branded system because it was facing pricing reductions in a major regional brand such as Fina. Therefore it adopted consignment.

In a discussion of the competitive implications of particular policies or practices, it is important that a differentiation be made between the possible

short and long run effects of the practices. The subsidization of retail facilities through the use of consignment and the introduction of second brand stations contributed to intensive short run price rivalry in these markets. However, these policies were introduced in the Montreal market to discipline a regional marketer whom Shell viewed as threatening to spread price competition in their reaction to the unbrandeds and the independent marketers who had been the original source of price competition in certain areas. The dominant concern of Shell was the containment of the unbranded or independent marketers in selective price pockets. Until this point in time, this had been accomplished through the use of second brands— "*Shell has used Alouette rebrands successfully to fight off unbrandeds*" (Document # 32175, emphasis added).[365] The new pricing policies of Petrofina that involved meeting the lowest priced independent marketer in the area and reacting "at considerable distances from the original discounter . . .[created] a much larger pocket than necessary to fight the original discounter" (Document # 32175).[366] As a result, Shell implemented the selective policy of consignment — selling at 21 outlets to ensure that Petrofina realized "*that the majors cannot live with a continuing erosion of their volume to deep discounters*" (Document # 32177, emphasis added)[367] and to prevent these price disturbances from spreading to stable markets. Shell chose to complement the use of consignment selling with the introduction of strategically located second brand stations. The latter were meant to prevent the unbrandeds from responding to the introduction of consignment by lowering their prices further. It was clearly the intent of Shell in implementing these policies to force these market areas to return to higher price levels. The monopolistic practices of consignment selling and second brand stations, therefore, allowed Shell to maintain a price level that effectively disciplined the initiators of price competition and prevented the expansion of this price disturbance outside these particular local markets. To effect this policy, Shell developed a system of price discrimination in the Montreal market in order to discipline both the unbranded marketers and Petrofina.

(f) *The Effectiveness of Shell's Strategy*

Shell's second brand network was the primary instrument this company used to combat the unbranded marketers of gasoline. Therefore an evaluation of its effectiveness is important. The independents had, by developing innovative methods of distribution, operated efficiently, selling large volumes of gasoline at relatively low prices. Shell's objective was both to contain the spread of price competition and to restrict the extent of price competition in existing pockets. Shell's intent may be summarized by excerpts from its own documents:

1. to ensure that competition from the unbranded sector did not conflict with Shell's branded operation (Document # 32833).[368]

2. "It will also discourage new entrants if it is clear that strong marketers will price at any new price bottom."

   (Document # 30691, May 23, 1972, Shell)[369]

3. "... control of discount retail pricing is best kept in our hands. . . ."

(Document # 32981, September 19, 1972, Shell)[370]

4. to dilute the private brand market in deep discount areas with express intent of price restoration

(Document # 38521).[371]

The objective of Shell's second brand network is summarized by Figure 24 entitled "Private Brand Market".[1] Two avenues of strategy are outlined therein — one which would have made the pribrand a permanent vehicle, the other a temporary vehicle. As has been established, Shell did not treat either of its second brands as permanent. Therefore, it is the 'temporary vehicle' route that illustrates Shell's objective. As this figure demonstrates, Shell's objectives for its second brands were to "lead pribrand prices up" and to "drive pribrand out of business" (Document # 34374).[373]

By forcing unbranded marketers to higher price levels, their impact upon the Shell branded network would be minimized.

The testimony of the Vice-President of Marketing confirms that Shell's policy of driving the independents out of business achieved its effect. Relatively small independents — those with "nothing but a couple of pumps and a strong heart"—were eliminated:

"Q. When you opened up new Beaver stations, how was the decision arrived at as to where they would be opened?

A. Generally in areas where the independents were making the most effect with their discounting." (Testimony of Mr. C.F. Williams, Vice-President of Public Affairs and Corporate Planning, Shell, Toronto Hearings, 1975, Vol. III, p. 371)[374]

"Q. I realize that at no time did all the other independents quit, but did you ever have a situation where you had a Shell on a corner and on the opposite corner there was an independent and then Shell changed to a pribrand and operated as a pribrand for a while and then the particular independent quit?

A. *I really do not recall that because it is very seldom that we would place our station for one independent. We do not take on one independent. The whole area is considered*, but when it is Beaver, *it would have an effect on the independent because we were selling at the same price and, all things being equal, we would dilute their volume and the successful ones would hang on and cut price further.*

---

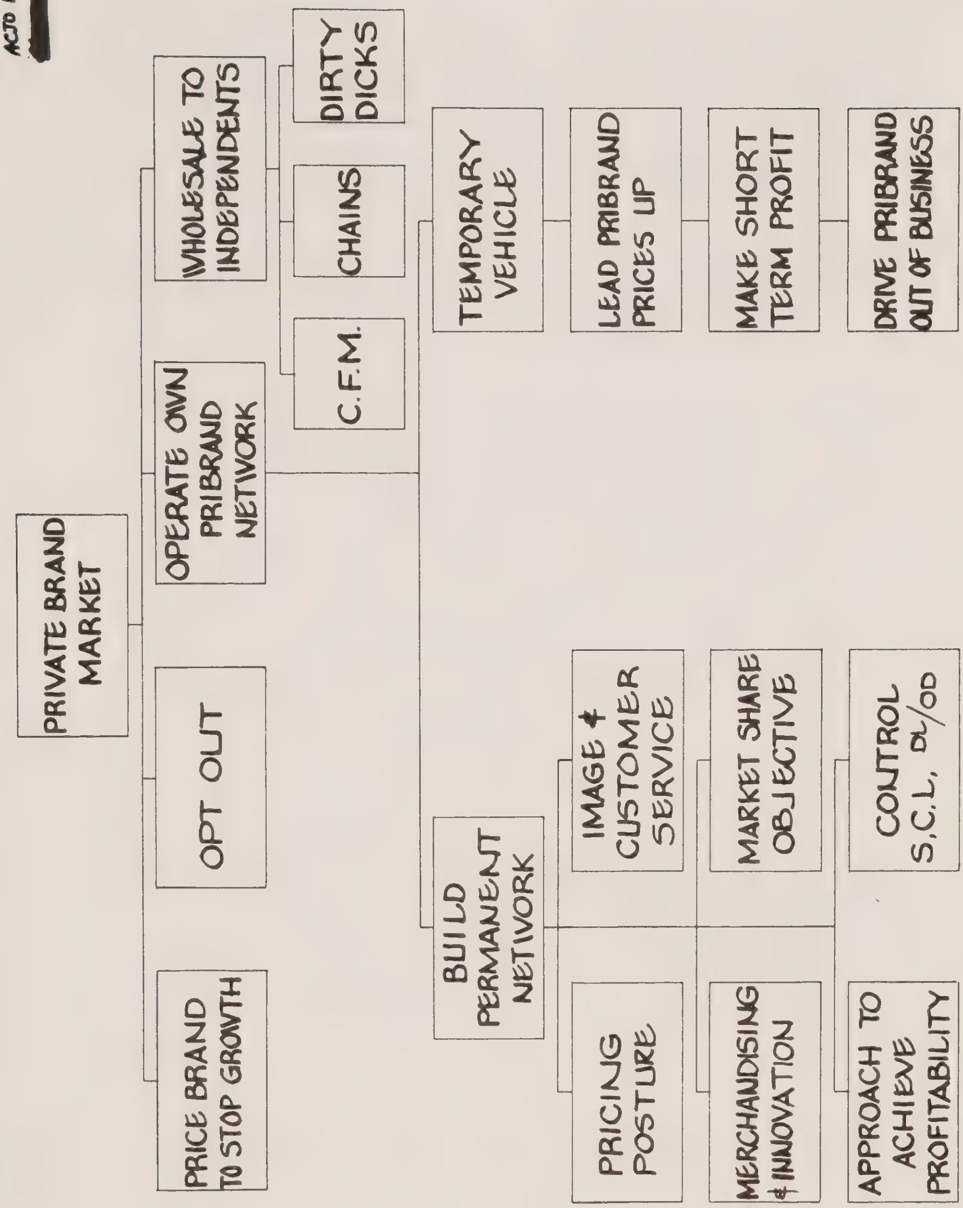
1. This document was found in the office of J. Jarrel, Co-ordinator of Operations and Planning (71-72) and Co-ordinator of Retail Sales (72-75) and was attached to a copy of the Marketing Policy Manual. Mr. Jarrel was responsible for developing policies and programmes related to retail sales activity.

(Testimony of Mr. J.E. Jarrel, Co-ordinator of Retail Sales, Shell, Toronto Hearings, 1975, Vol. V, p. 513)[372]

ACTO 13164 [redacted] A

34374

FIGURE 24



(Reproduction of Document #34374
'Figure 24' added)

ACJ013165 $B_{p}a$

MARKETING POLICY MANUAL

Products/Pricing 15

GASOLINE PRICING TO RETAIL OUTLETS AND WHOLESALE RESELLERS

GENERAL

To the motoring public which constitute a major market for our products, the gasoline service station operator is our first line representation. It is Shell's policy, therefore, to give careful regard to all phases of its relationship with these dealers to ensure continued favourable representation of Shell to the motorist.

While the overall consumption of motor gasoline is virtually insensitive to price, the demand curve for the products of individual companies or for local geographic areas tends to be highly elastic in the short term.

Furthermore, experience has shown that, on a long-term basis, if Shell and its dealers are to maintain position in any market they cannot expect to command a price higher than the price of competing nationally branded products and rarely can they expect Shell gasoline to command a price substantially higher than the price at which a significant volume of locally branded products are being sold.

Price fluctuations may occur directly or indirectly as a result of changing costs in the manufacture, distribution or transportation of products, or in consequence of changes in crude oil and taxation. Price alterations also may be required to meet varying competitive conditions.

Shell dealers are independent businessmen who under normal operating circumstances receive an appropriate return on their investment and effort. As such they must be prepared to meet temporary, competitive situations without support from Shell. It is expected that dealers prepare themselves financially and, as required, introduce efficiencies and changes in their operations to withstand such temporary reductions in their gasoline margins.

"Direct Markets" implies that the dealers involved are invoiced by Shell. For "Indirect Markets" (i.e. Jobber Agents', Reseller Agents' and other resellers' retail accounts), see below.

As reductions in the net realized price affect Shell's income substantially caution should be exercised relative to involvement in large markets or in extreme price fluctuations. In general, reductions are best made gradually until the point is reached where lost business can be regained and maintained.

WHERE AND WHEN TO ACT — ALL MARKETS

34375

Remedial action may be warranted —

1. Where **competition has created a sustained depressed price condition** which adversely affects our dealers so that they are unable to derive adequate compensation or provide suitable remuneration for their staff, thereby impairing their ability to maintain the high standard of operation which we expect of all Shell dealers.
2. Even where prices are similar, if it is established that, after evaluating competitive facilities, services, products and sales promotion, our dealers are suffering the effect as in 1. above because of indirect price cutting.

Revised June 1968
Cancels June 1963

(Reproduction of Document #34375)

ACJ013166 C
μ L

Products/Pricing 16 **MARKETING POLICY MANUAL**

GASOLINE PRICING TO RETAIL OUTLETS AND WHOLESALE RESELLERS

HOW TO ACT — DIRECT MARKETS

After careful analysis and confirmation that the above conditions pertain, the Region Manager (or with the specific delegation of the Region Manager to the Region Retail Sales and Agency Sales Managers in coordination with one another), may take remedial action, **in direct markets**, under either of the following authorized programmes:

1. TEMPORARY VOLUNTARY ALLOWANCE (TVA)
2. GASOLINE CONSIGNMENT PLAN

As a general concept when either program is employed, it is on the understanding that dealers will share in the effective price reduction to the extent which can reasonably be expected. Variations in competitive practices make it impractical to establish a fixed formula applying to all areas. However a 60% Shell 40% dealer sharing appears to be a reasonable general guide.

In developing a cost sharing plan it is necessary to also recognize:

1. The need to be reasonably competitive with formulas used by other majors.
2. The risks involved in establishing too high a minimum dealer margin.

Regions should keep Head Office informed on the cost sharing formulas they are using.

TEMPORARY VOLUNTARY ALLOWANCE (TVA)

Under this programme Shell will grant a TVA applicable to its prevailing Listed Dealer Tank Truck Price providing participating dealers are willing to retail gasolines at prices that do not exceed maximums specified by Shell. The following provisions also apply:

1. TVA be granted on a day to day basis at Shell's discretion.
2. TVA be shown as a separate item on invoices and allowed off each invoice while the TVA is in effect.
3. TVA be offered to all competing Shell dealers.
4. That all provisions of the Combines Investigation Act be met. Broadly, this requires that implementation of our TVA programme ensures that we avoid discrimination and offer equal treatment to all competing Shell dealers. The Act also prohibits resale price maintenance but permits a supplier to set the maximum price at which its products can be resold (i.e., a maximum retail pump price).
5. The area in which all competing Shell dealers are located be recorded on a suitable map with extreme care and realism.

Revised June 1963
Cancels June 1963

34376

(Reproduction of Document #34376)

ACJ013167 D

MARKETING POLICY MANUAL

Products/Pricing 17

GASOLINE PRICING TO RETAIL OUTLETS AND WHOLESALE RESELLERS

HOW TO ACT — DIRECT MARKETS (continued)

TEMPORARY VOLUNTARY ALLOWANCE (continued)

6. The area includes all territory within which Shell retail dealers are competing with each other for the same customers. Due consideration should be given to the effect there may be on the buying habits of those individuals who do not comprise the usual customer group for the retail outlets in the area.
7. Changes in areas be made when, but only when, there has been an error in judgment in setting up the original boundaries or when there is a change in local competitive conditions such as may occur in the buying habits of customers when lower prices are available nearby. Whenever a change is made, a statement should be prepared substantiating the change.
8. A completely documented historical file be maintained supporting the establishment of all trade areas and any subsequent changes thereto.
9. Of course there can be no compulsion involved in the acceptance of this programme by the dealer.
10. All participating dealers be signed on Dealer Subsidy Agreement and the related Schedule A. Copies of the latter will be provided to the applicable delivery plant and price checking function. If a dealer elects not to enter into a Dealer Subsidy Agreement or cancels one, the prevailing Listed Dealer Tank Truck Price will apply.

GASOLINE CONSIGNMENT PLAN

Under this programme, Shell may, upon the request of a dealer, suspend the Dealer Sales Contract or Dealer Sales Agreement in respect of gasoline so that the dealer may operate with consigned stocks as a selling agent of Shell, with Shell specifying the retail pump price and the dealer receiving his compensation in the form of a commission on his sales.

It is important that the full significance of the Gasoline Consignment Plan be explained to the dealer before signing the Gasoline Consignment Agreement. Procedures applicable to the establishment and maintenance of this programme are recorded in the Retail Section of the Marketing Procedure Manual.

There can of course be no compulsion involved in the acceptance of this programme by the dealer.

DELEGATION OF AUTHORITY TO REGIONS — DIRECT MARKETS (TVA and Consignment Plans)

Regions will be expected to inform Head Office of their pricing strategies and anticipated realizations in each major market in conjunction with the review of their annual Operating Budget. Thereafter, the Region Manager (or the Region Retail Sales Manager with specific delegation from the Region Manager) is authorized to administer Shell's support programmes to a point where the realized price from dealers is 4¢ below the prevailing listed Dealer Tank Truck Price. 34377

Where a fixed subsidy has prevailed for several years, Regions will be granted additional pricing authority.

(Reproduction of Document #34377)

ACJ013168E

Products/Pricing 18 MARKETING POLICY MANUAL

GASOLINE PRICING TO RETAIL OUTLETS AND WHOLESALE RESELLERS

DELEGATION OF AUTHORITY TO REGIONS — DIRECT MARKETS (TVA and Consignment Plans)

The General Manager Marketing and the Coordinator Retail Sales must be advised of any price changes which:

1. Have a substantial impact on planned revenue.
2. Result in grossbacks less than Product Planning Values.
3. Represent a significant price deterioration in a large market.

Realized prices for Commission Operated Stations should be higher than the Leased Stations by an amount equal to the loss of rent revenue and the additional expense assumed by Shell (generally 2 - 3¢).

Although no formal reporting is required, it will be expected that Head Office will be kept current on the extent of price subsidization throughout the Region.

JOBBER AGENTS — RETAIL ACCOUNTS

Subject to the applicable portions of general policy under "All Markets" and "Direct Markets" above, Shell may, at its sole discretion, grant assistance to Jobber Agents in extending allowances to their dealers whose business has been adversely affected by competitors' depressed retail prices. Caution must be exercised in establishing areas in locations where direct delivery and/or Jobber Agent and/or Reseller Agent territories abut, to ensure that areas are not restricted because of artificial, administrative boundaries. This assistance is further subject to the following:

1. Shell will assume 40% of the first 2.0¢ depression of the retail pump price (i.e. the residual 40% after dealer has absorbed 60%), and share 50%/50% with Jobber Agent on the remainder, to a maximum absorption by the Jobber Agent of 20% of his contractual margin. (It is important that the economic welfare of the Jobber Agent not be impaired by prolonged absorption at the maximum level.)
2. Shell's support may be continued only as long as the Jobber Agent's policy of extending allowances to his dealers is equitable to them in Shell's judgment and in general conformance with Shell's implementation of the policy in direct markets.

As an administrative convenience, c.p.g. assistance to a Jobber Agent will be documented on Special Price Authorities or Special Price Requests **in the name of the Jobber Agent**, with a separate S.P.A./S.P.R. for each different depressed area. The S.P.A./S.P.R. will have registered thereon —

1. The names and addresses of the Jobber Agent's dealers covered by the support.
2. Justification for the allowance.
3. Special Price Authority/Special Price Request review date of two month's maximum from effective date.

Payment of assistance to Jobber Agents will be on the basis of Jobber Agent's statements substantiated by copies of invoices supporting deliveries to the affected retail accounts.

No assistance is to be allowed Jobber Agents, under this policy, on other than sales to retail accounts.

Revised June 1968
Cancels June 1963

34378

(Reproduction of Document #34378)

Q. The successful independents?

A. *Yes. And the ones that had nothing but a couple of pumps and a strong heart would give up, or they would sell it to somebody else.*"

(Testimony of Mr. C.F. Williams, Vice-President of Public Affairs and Corporate Planning, Shell, Toronto Hearings, 1975, Vol. III, p. 378-9, emphasis added)[375]

It must, however, be recognized that the second brand 'route' was only one of a number of exclusionary monopolistic practices used by Shell and other majors to combat the spread of competition. It was used primarily in situations where the majors themselves had not broken ranks and begun to compete by lowering the price of branded gasoline sales. As the following quotation indicates, Shell recognized that its second brand had the effect of slowing the spread of price competition:

"The implementation of a Gasmart, Regent or other pribrand tends to defer the onset of branded price competition by the majors, until such time as a Gulf, BP or Fina decides to price with their brand. *In the past we have gained as much as 2-3 years before price erosion of the level now taking place in Ontario and Quebec in the branded network.*"

(Document # 32981, September 19, 1972, Shell, emphasis added)[376]

Thus, in those situations where the use of second brands was adopted, Shell felt that their objectives had been met. Other statements confirm Shell's evaluation of the success of this instrument.

As early as 1969, Shell indicated that it had success with second brands in Quebec in discouraging the growth of the unbranded marketer (Document # 32922).[377] For instance, in a document entitled "Marketing Review–Spring Appraisal (1970)", it was noted that in Quebec, Shell's second brands had discouraged the independent discounter:

"*The pressure on retail prices* by independents, particularly in selective markets on the periphery of urban centres, continued and seriously limits our growth potential in these areas. We estimate that in Canda [sic] the market share enjoyed by private brands is of the order of 10% — a market segment where have not competed, [sic] with the exception of Beaver (our Ontario unbranded operator). . . .

"During 1969 we agreed that we should endeavour to participate in this growing market and we set objectives as follows:

(1) where we had supplies available, we would bid for the volume of the established department store retailers at prices which would provide us with an adequate return and would in no way be marginal

(2) in areas where depressed conditions had existed over a long period of time and there was no indication of upward price improvements, we would establish concubine operations to compete with the discounters. As of today, we have two stations in Quebec who market under the Alouette brand without any Shell identification, all sales being on a cash and carry basis. We are establishing a

similar operation in Western Canada under the brand name Savex. In Ontario, where market conditions so demand, we propose to extend our Beaver operations. Our planning does not envisage indiscriminate use of this new sales tool but in addition to providing incremental income, we believe that *by discreet application, we can discourage the growth of this type of discounter. Early results in Quebec substantiate this assumption.*"

(Document # 32920-2, May 26, 27, 1970, Shell, emphasis added in last paragraph)[378]

Again, another assessment of the "Eastern Region" indicates that Shell found the combined use of second brands along with temporary allowances to be effective. The minutes of a Shell retailing meeting in July of 1971 reported:

"In summary, *it appeared that Eastern Region was not being adversely affected by unbranded activity except in small chronic pockets and in those, the concubine or T.V.A. solution was adequate.*"

(Document # 28373, August 10, 1971, Shell, emphasis added)[379]

In the spring of 1972, a similar statement of success was made:

"Shell has used Alouette rebrands successfully to fight off unbrandeds,. . . ."

(Document # 32175, April 13, 1972, Shell)[380]

Shell's policy was not just to confine the spread of independents; it also attempted to do so in a fashion that would not cause other major marketers to retaliate. For instance, in 1971, Shell's primary concern in responding to the "mini-majors" prices was that it not undercut Esso and Gulf — otherwise, price competition would develop:

"A review of price levels in Ontario indicated that as a result of trying to meet the prices of the 'mini majors', Shell may be pricing to a point where we are tending to undercut the levels of Gulf-Esso.

. . .

"*It was stated that Shell must not find itself in the position of becoming the company that leads the price down in the industry.*"

(Document # 28371-2, August 10, 1971, Shell, emphasis added)[381]

Attempts to avoid competition among the majors were successful. The following excerpt from a letter written by Shell's Vice-President of Marketing to all Regional Managers in 1970, underlined the success of the oil companies in avoiding widespread price competition:

"In spite of the serious deterioration we are experiencing in certain of our markets, however, it has amazed me the way the majors have endeavoured to hold the line and not indulge in widespread price wars which most of us remember from the early 1960's. This is particularly more amazing in view of the chaotic pricing conditions which have gripped the United States market over the past year."

(Document # 32926, August 18, 1970, Shell)[382]

Other evidence from 1972 indicates that Shell's second brand operations were successful in meeting independents without causing a competitive response from other large integrated oil companies — a response that would have both spread price disturbances to other areas and eroded branded prices. In a December 1972 memorandum to Shell International Petroleum Company, Shell's Vice-President of Marketing commented on the reason for the implementation of second brands:

> "While Shell Canada have not as yet achieved all of their objectives with pribrand operations, it is still considered a preferable choice to the high cost of using the Shell brand to compete directly with independents. The latter would involve the real possibility that majors' depressed prices would spread out from the price pockets across broad areas of the market."
>
> (Document # 34449, December 20, 1972, Shell)[383]

Implicit in this statement is the opinion that the objective of preventing price pockets from spreading out across wide areas had been achieved. This is explicitly stated in the minutes of the Regional Managers' meeting in September of 1972. It was noted that in the Central Marketing Region "Beaver and Gas Mart operations have proven to be a very effective method of retaining sales volume without causing a general price war, . . . " (Document # 32978).[384]

In conclusion, throughout the period 1969 to 1972, Shell's second brands proved to be an effective tool of maintaining a branded price structure that had reached inordinately high levels. By the end of the period the majors had turned to new tools as the regional marketers reacted to the independents with their brands. Shell observed:

> "Because of competitive pricing action by the majors in Ottawa and in parts of Montreal, there is now less attraction (price differential — majors vs. unbrandeds) to expand the number of Shell Concubines."
>
> (Document # 38531, October 31, 1972, Shell)[385]

As has been described above, the new situation was met with new policies — a combined consignment and second brand policy; however, the objectives did not change — the reduction of price competition via the use of disciplinary price discrimination. Second brands had served their purpose. As the General Manager of Marketing observed in the fall of 1972, "In the past, we have gained as much as 2-3 years before price erosion..." (Document # 32981).[386] This was exactly the time frame between the beginning of the period when the majors pushed their branded margins to record levels and the transition to a new policy in late 1972 when control over the marketing sector took on an added importance to the majors. Therefore second brands successfully delayed the onset of price competition.

3. *Gulf — Marketing Practices*

(a) *Introduction*

The major marketers of petroleum all adopted price support tools that had a common objective — to contain price competition from the lower-priced private brand dealers. This was done by developing systematic price discrimination schemes that maintained lower prices in areas served by independents but higher prices elsewhere. To this end, Shell and Imperial relied heavily upon second brands. Gulf, on the other hand, favoured the use of consignment to attain the same objective. As shall be demonstrated, Gulf also perceived the threat to high major brand prices to come from the independent sector: the support programmes that it implemented were aimed at this sector; they were meant to restrict the growth of independents; they were designed to confine and to restrict the spread of price competition; and they were used in a predatory or disciplinary fashion so as to increase the pump prices of independents.

While Gulf was one of the major national companies, it was not a leader in marketing. Gulf preferred to follow Imperial or Shell in its pricing policies. The fact that Gulf perceived the same threat to its price structure, acknowledged the same excessiveness of branded prices, and also aimed its predatory policies at the independent sector is significant. For it indicates that Gulf was not just reacting to competition occasioned by Shell and Imperial's disciplinary policies. It demonstrates that Gulf, similar to the the other majors, was also intent on disciplining this sector.

Gulf's policies not only confirm the extent of parallel behaviour of the major marketers, but they also place the effectiveness of the disciplinary practices in historical perspective. Gulf documents outline the excessive nature of retail margins and how policies like consignment were used to deal with outbreaks of competition. As such, the anti-competitive nature of this type of marketing practice is demonstrated.

(b) *The Evolution of Gulf's Consignment Practices*

Selective pricing policies, it has been argued, were a tool that was used to protect the high margins of the majors' retail marketing sector. Contained in this statement is the implicit notion that price competition among the majors was insufficient to erode the inordinately high margins that existed in marketing. Gulf documents substantiate this picture of the marketing sector. A 1971 Gulf study of the relative profitability of reseller versus major brand operations noted that price competition among the majors was almost non-existent:

> "Several factors have contributed to the situation which finds the petroleum industry with more capital invested in retail facilities than product prices will support. . . .*there has been a marked reluctance on the part of the integrated companies to compete with each other in the retail market on the basis of product price.* Until

comparatively recent years competition was limited primarily to providing spatial convenience and service *under the umbrella of a secure, fairly comfortable tankwagon price structure*. . . .

"This policy which was fairly general in the industry, particularly during the latter half of the 1950's, led to a rapid growth in the number of service stations built or financed by the major companies;"

(Document # 60122-3, July 21, 1971, Gulf, emphasis added)[387]

Gulf, therefore, attributed the "comfortable tankwagon price structure" to a lack of price competition. Prior to the proliferation of the independents during the early nineteen sixties, the majors operated in a marketplace characterized by non-price competition, heavy advertising, promotional campaigns, and the overbuilding of service stations. As a result, marketing costs — both wholesale and retail — were high. Other Gulf reports confirm that it regarded the marketing sector's margins as being too high in this period. The following Gulf study refers to the "fat" margins and the consequent overbuilding that resulted from non-price competition:

"THE KEY PROBLEM THAT ALL MAJOR COMPANIES HAVE IS THE LARGE NUMBER OF LOW VOLUME, LOW POTENTIAL, NON VIABLE STATIONS RESULTING FROM THE EXPANSION IN THE 50'S AND EARLY 60'S. THESE ARE MILLSTONES AROUND THE NECK OF THE INDUSTRY AND *HAVE ONLY EXISTED AS LONG AS THERE WERE FAT MARGINS AVAILABLE*. THEY ARE NOT ABLE TO COMPETE IF MARGINS ARE NARROWED AND ARE NOT CAPABLE OF DEVELOPING THE INCREASED VOLUME REQUIRED."

(Document # 69570, November 30, 1972, Gulf, emphasis added)[388]

Thus Gulf recognized that non-price competition in the marketing system had increased its costs to a level commensurate with the high marketing margins that were set by the industry. The majors created a network that was vulnerable to entry from lower cost marketers. Because entry from non-integrated marketers offered a threat to the stability of the majors' branded marketing sector, the industry developed a set of marketing instruments to control and to reduce the rate of entry that would otherwise have occurred in response to its high margins.

The high margins that the majors extracted from the retail sector have twice occasioned periods of a high rate of entry from independents — first, in the early nineteen sixties, then, in the early nineteen seventies. Referring to the period in the early nineteen sixties, a Gulf study made it clear that the high retail/wholesale margins set by the industry were the cause of entry:

"Taking advantage of the *high margins available*, private brand retailers sought to win customers by posting prices well below those of the majors' outlets, offering the consumer lower price in lieu of convenience. There had, of course, always been a

certain amount of private brand marketing, but the new discounters, taking advantage of the large mass markets made remarkable inroads in a very short period of time."

(Document # 60123, July 21, 1971, Gulf, emphasis added)[389]

The new marketers were able to compete on price by offering less convenience. Table 28 indicates that for a period of time in the early nineteen sixties, this caused a collapse in the branded price structure. However, by the late nineteen sixties, margins returned to their 1958-59 levels. Once again, independent private brand dealers began to enter the market. Gulf described this process in 1971:

"There has been increasing concern of late with the apparent rapid growth of Private Brand Retailers on the Prairies. Concern is that the growth rate of this market is causing significant harm to branded retail market activities. . . .

"*For the last several years there have been very substantial increases in both wholesale and retail gasoline margins on the Prairies. . . :*

. . .

"*The increased margins . . .are undoubtedly a major reason for the proliferation of private brand outlets as evidenced in this market area.*"

(Documents # 60018, # 60025, October 4, 1971, Gulf, emphasis added)[390, 391]

TABLE 28

GULF COMBINED WHOLESALE & RETAIL
MARGINS BY CITY, 1958 TO 1968
(¢ per gallon)

Year	*Halifax*	*Montreal*	*Toronto*	*Winnipeg*	*Calgary*	*Vancouver*
1958	11.2	15.8	14.4	. . . .	16.6	15.1
1959	12.2	18.4	16.2	. . . .	16.5	15.9
1960	13.4	13.0	12.2	. . . .	16.7	12.4
1961	13.6	13.1	12.3	. . . .	16.1	12.4
1962	12.7	12.2	12.0	. . . .	15.2	9.8
1963	12.5	10.0	7.3	. . . .	13.2	9.9
1964	16.2	11.2	11.7	11.5	13.2	9.1
1965	15.2	12.0	11.8	11.0	12.7	12.0
1966	15.1	14.1	14.6	12.3	14.8	13.4
1967	16.7	15.9	16.5	13.7	16.8	15.1
1968	15.9	13.8	15.9	14.1	17.0	15.4

Source: Document # 74557-8, Gulf[392]

In the case of entry in both the early nineteen sixties and early nineteen seventies, Gulf and the other majors in the industry reacted by adopting similar marketing practices. As Gulf observed, the industry responded

to entry in the earlier period by introducing consignment. In commenting on the growth of the independents, Gulf noted:

> "This action set off a flurry of counter pricing at the major companies' outlets, supported by their suppliers, and in 1961, resulting eventually in the majors themselves accepting responsibility for retail pricing by the process of placing outlets on consignment."
>
> (Document # 60123, July 21, 1971, Gulf)[393]

Therefore consignment was used to combat the price competition that was generated by independent marketers in the early nineteen sixties.

There is also a suggestion that consignment was used by the majors to support prices at levels that their own costs could not justify. Gulf admitted that it introduced consignment even though the prices of independents that its subsidy was designed to meet were at uneconomic levels as far as Gulf's own cost structure was concerned:

> "The consignment plan was originally introduced to provide a formula which would permit us to assist the Dealer Trade in *meeting price competition in areas where retail gasoline prices were continuing at below economic levels.* Dealers found in these circumstances that they could not realize adequate margins between their cost of product and their resale price. To alleviate the problem we introduced the gasoline consignment plan under which the gasoline remained the property of the Company and was sold at prices fixed by the Company by the Dealers as commission agents."
>
> (Document # 71815, August 20, 1965, Gulf, emphasis added)[394]

The low retail prices in some areas were 'uneconomic' not as a result of temporary over-supply nor because of irrational loss-leader selling. As the previous quotations acknowledged, with retail/wholesale margins set at high levels, oligopolistic non-price competition absorbed the majors' excess revenues in additional costs. The independent did not incur these costs and, therefore, could afford to price at a lower level.

It is also significant that Gulf's subsidy policy was not aimed at reducing permanently the wholesale/retail margins that Gulf felt were 'fat' and 'comfortable'. Gulf noted that its policy was neither meant to encourage price competition nor was it to be used to initiate lower prices catering to a separate price-conscious segment of the market. Subsidies were only to be used to meet lower prices posted by others:

> "Present company policy on dealer subsidies is to grant temporary competitive allowances to allow a dealer to remain competitive and retain present volume of business. *It is not company policy to lead in the downward revision of prices.* (Policy No. 1020 — January 1961)"
>
> (Document # 72574, Undated, Gulf, emphasis added)[395]

Implicit in the above quotation is the notion that Gulf intended its subsidy policies such as consignment to be only temporary. Its actions bear this out;

when prices improved, consignment was removed. For instance, by 1965, prices had begun to firm and Gulf considered removing consignment:

> "In certain areas market conditions may have improved and the use of the consignment plan may no longer be necessary."
>
> (Document # 71815, August 20, 1965, Gulf)[396]

Similarly a document, dated 1965, indicated that it was Gulf's policy to continue to apply consignment programmes on a selective basis. It was Gulf's intent to let pump prices return to their high levels wherever "depressed pump prices" were *not* "a continuing factor"[1] (Document # 71815).[397] In areas where prices remained depressed at the low levels of the early nineteen sixties, Gulf continued to subsidize its price structure to meet competition from independents. For instance, while consignment was being phased out in Ontario toward the end of 1965, it was still in effect in the "depressed" Montreal market in 1966:

> "Generally in the Metropolitan Toronto area regular gasoline is priced at 45.9 cents per gallon and in Montreal at 41.9 cents per gallon. The Montreal price is to some extent depressed due to local conditions. It should be 42.9 cents per gallon but even now, Independents are selling from 2 to 5 cents below the branded marketers and the chances of immediate improvement are remote.
>
> "Retail operators in Montreal are still on a consignment programme which guarantees them 7.5 cents per gallon. There has been some suggestion this be changed and that the dealers should get another 2 cents per gallon. The majors position is that they will take the dealers off consignment but will not change the present base price structure."
>
> (Document # 62021, August 12, 1966, Gulf)[398]

In 1972, Gulf noted that its formal consignment policy had remained in place for over a decade:

> "Our current written policy, number 1020, was composed in January, 1961."
>
> (Document # 69421, April 11, 1972, Gulf)[399]
>
> "Company Policy No. 1020 dated January 1961 states that temporary competitive allowances will be granted to dealers to allow them to remain competitive and to retain present volume of business."
>
> (Document # 69425, April 10, 1972, Gulf)[400]

In summary, the evidence indicates that Gulf, like Shell, appreciated that the major branded networks could not meet the independents on a price basis due to the relative inefficiency of the former. The extensive number of low

---

1. Where depressed prices were not a problem, this document noted that consignment was to be removed when dealer commissions rose above a specific level. Dealers, when they saw prices go up to the maximum set by the commission schedule, would have to cease participation in the programme if they were to widen their own margins.

volume major brand service stations built during the nineteen fifties and early nineteen sixties required 'fat' retail and wholesale marketing margins to survive. Gulf admitted that these stations were "not able to compete if margins are narrowed" (Document # 69570).[401] In response to entry from firms with lower marketing costs, Gulf implemented a consignment programme in those areas "where retail gasoline prices were continuing at below economic levels" (Document # 71815).[402]

Gulf's own perception of the inefficiency of its marketing network indicates that it fully comprehended the fact that it could only meet the independents by pricing at 'below economic levels'. Therefore its policy, even in this earlier period, was predatory to this extent. The fact that its subsidy programmes were envisaged as only a temporary instrument — even in the face of the acknowledged superiority of independents' costs — is additional evidence of predatory intent. If subsidies were expected to be temporary, Gulf's expectation must have been that prices would return to the original high branded level. Finally, branded prices were to be kept high in those markets not affected by price competition and branded prices were to be raised in price depressed markets as soon as the situation improved.

Most of the objectives of the majors' subsidy programmes were realized by the mid-nineteen sixties. The majors succeeded in returning retail/wholesale margins to their original levels by 1965-66. At the same time, Gulf began to abandon consignment in markets where 'depressed prices' no longer existed. Table 28 indicated that the level of margins in the early nineteen sixties — described by Gulf as "high" (Document # 60123)[403] or "fat" (Document # 69570)[404]—ranged from 12 to 17 cents per gallon. By 1968, these margins had been re-established by Gulf and continued at these and higher levels into the nineteen seventies. For instance, in 1971, the combined retail/wholesale margin in both Winnipeg and Calgary exceeded 18 cents per gallon for major brands (Document # 60025).[405] In light of the objectives of the majors' subsidy policy, the evidence as to the course of post-1965 margins is an important gauge of the effect of the disciplinary practices employed by the majors in the early nineteen sixties. For by the mid-nineteen sixties, the majors had successfully fought off the unbrandeds and had begun to return retail/wholesale margins to the 'excessive' levels of the late nineteen fifties. Tools like consignment should, therefore, not be construed as devices that permitted Gulf to adapt to new marketing forms. They were meant to fight lower cost distribution techniques; they were not meant to adapt to them. The evidence on Gulf's margins indicates that after a brief equation of prices with unbranded cost levels in the early nineteen sixties, the branded sector was able to move its prices upwards once again.

More evidence exists for the early nineteen seventies than for the early nineteen sixties as to the predatory and disciplinary motivation of Gulf in

introducing subsidy programmes. But the evidence from the earlier period confirms that the effect of the subsidy policy corresponded exactly to the intentions expressed for the same policies in the later period. It, therefore, indicates that consignment selling and the other disciplinary price discrimination tools used by the majors permitted high prices to be charged the consumer.

(c) *The Use of Consignment in the Early Nineteen Seventies*

As marketing margins escalated in the late nineteen sixties, the threat of entry from independents reappeared. By 1970, Gulf noted that the profit incentive for unbranded price discounters had reached an all-time high (Document # 67231).[406] Increased margins, in Gulf's words, were "undoubtedly a major reason for the proliferation of private brand outlets in this market area" (Document # 60025).[407] Not only did the private brand chains which had survived the earlier period expand but several newcomers entered the gasoline market.

The following quotations illustrate Gulf's perception of the nature of the growth experienced by the non-integrated companies:

"— Non-Refiners have increased their share of the major urban retail markets from 14.2% in 1968 to 19.7% in 1971. While this includes Supertest and others, the main component is P.B.D.'s.

"— The number of discount retail outlets in Montreal has doubled between 1969 and 1971 to 19% of the outlets. While again some of these are major brands, the private brands have also been growing.

"— Private brand retail outlets have been spreading steadily out from southern Ontario to cover most highways within 200 miles of Toronto.

"— P.B.D.'s in the Prairies gasoline market have been growing by about 20% per year mainly in the main cities.

"— P.B.D.'s are beginning to appear in the Maritimes."

(Document # 67096, April, 1972, Gulf)[408]

"In major urban centers, non-refiners have experienced an 18% growth compared to refiners increases of only 6% over two years. This increased their market share from 17.2% in 1969 to 18.7% in 1971."

(Document # 67251, Undated, Gulf)[409]

"In Canada, non-refiners who market gasoline account for 17.8% of the market share in the principal metropolitan areas and their volumes are growing at 3 times the rate of refiner/ marketers."

(Document # 68285, 1970, Gulf)[410]

In the early nineteen sixties, growth of private brand retailers had been greatest in central Canada; by the early nineteen seventies competition from the private brand sector had also begun to spread rapidly to the Prairies. Annual rates of private brand growth in Winnipeg, Regina, Calgary and Edmonton

averaged 23.5 per cent from 1968-1970. In contrast, the growth rate of major brands was only 7.5 per cent per year (Document # 60019).[411] Gulf, as a result, lost market share. In Winnipeg, Gulf's share fell from 24.2 per cent in 1968 to 19.9 per cent in 1970; in Regina, from 26.9 per cent to 19.9 per cent; in Calgary, from 26.8 per cent to 22.4 per cent; in Edmonton, from 21.5 per cent to 18.8 per cent (Document # 60021).[412]

Some of the expansion in the unbranded sector was accounted for by the majors' own second brands; however, this growth was only a reaction to the independents. It was the independent marketers who initiated price competition and who offered the greatest threat to the majors' branded price structure. For instance, Gulf noted that the independents were responsible for 'price erosion' in the Toronto-Hamilton area beginning in late 1968:

> "Price improvement was achieved beginning late in 1966 and continued through 1967 and the early part of 1968. Late in 1968 we lost some of the accounts to competition as prices began to decline.
>
> "*We believe it significant that this erosion began occurring with the entry of Liquifuels and Martin Petroleum into the Toronto gasoline market, followed some time later by Calex.*"
>
> (Document # 63521, March 31, 1970, Gulf, emphasis added)[413]

This situation continued. In the early nineteen seventies it is again reported that the "non-majors" were causing Gulf's marketing department the most trouble:

> "We have asked Marketing people which competitors have encroached most on their retail outlet networks. *They not only believe that the non-majors have been most worrysome to them, but that the influence of these marketers will grow.*"
>
> (Document # 68276, 1970, Gulf, empahsis added)[414]

Other quotations indicate that the competition, from which Gulf suffered most, came from independents:

> ". . . over the last three to four years, Gulf and other major marketers have been reluctant to meet price competition with the brand name. As a result, the spread between branded and non-branded pump prices has been increasing in many market areas and branded outlets have gradually lost volumes.
>
> . . .
>
> ". . . the problem is most acute in Quebec and Ontario, . . . "
>
> (Document # 72624-5, April 11, 1972, Gulf)[415]
>
> "The major issue is the apparent erosion of the brand system of retail marketing...:
>
> a) At the present time, the 'non-refiners' are increasing their share of the retail gasoline market at a faster rate than the market is growing."
>
> (Document # 73920, Undated, Gulf)[416]

The extent to which Gulf itself recognized that its own dealer network and those of the other majors were highly inefficient is documented in its

estimate of the number of their own service stations that would be rendered obsolete should the price discounters have continued to grow. From 1969 onward, Gulf documents contain examples of the extent of redundancy built into the system by the non-price competition of an earlier period:

> "... the total discount gallonage may grow from 17.6 to 28.3% of the total urban retail market over a five year period. This is equivalent to 2% gain in share per year.
>
> "The net effect of such growth in the discount field will undoubtedly render a large number of the conventional service station assets *obsolete*."
>
> (Document # 67220, July 3, 1970, Gulf, emphasis added)[417]
>
> "The net effect of this discount influx will render approximately 20% of the current conventional outlets *obsolete*."
>
> (Document # 67222, July 3, 1970, Gulf, emphasis added)[418]
>
> "It is believed that cross-merchandising and mass-merchandising retail operations will have the greatest impact on the size and nature of the discount market, triggering other reactions by the Minor Brand operator in an effort to survive. When this stronger price competition grows and develops, the most *vulnerable* operations to this advance are the non-descript, *all-ready struggling*, conventional two-bay service stations. *It is estimated that approximately 20% of these existing assets will be rendered obsolete in the next five years*."
>
> (Document # 73955, July, 1970, Gulf, emphasis added)[419]
>
> "Due to Gulf's and other marketers' planned segmentation of retail gasoline market by differentiation in pricing and complementary activities, the gasoline sales will rapidly precipitate to 20% of the existing outlets which are located to pump large volumes at lower margins and to 50% of the existing outlets which will continue to merchandise in the more traditional way. *The other 30% of the outlets will rapidly be forced to close due to dwindling sales. Gulf has a high percentage of these obsolete locations*."
>
> (Document # 67308-9, Undated, Gulf, emphasis added)[420]

As a result, Gulf addressed itself to devising a method of preventing the continued spread of price competition—"What is of concern is how to *contain* the rapid growth of resellers in the short-term without seriously curtailing Gulf's short-term profit position" (Document # 60120, emphasis added).[421] Of course, any decrease in Gulf's prices for this purpose would have eroded revenues. But Gulf's inefficiency meant that a decrease in prices in response to the independents would have driven its prices below costs. Gulf summarized the "dilemma" it faced:

> "Here, then, is the major oil companies' dilemma. The major oil company, saddled with a high investment in retail facilities —— facilities which are under-utilized because there are too many outlets competing for a relatively static demand —— cannot meet the resellers price without, in the short term, accepting a lower return on its investment."
>
> (Document # 60118, July 21, 1971, Gulf)[422]

Since Gulf's marketing return (even with the very high margins) had only been normal, the lower return envisaged as necessary to combat independents was synonomous with the incurring of losses. In discussing Gulf's reluctance to compete, the following statement indicates that Gulf's management fully understood that its marketing section was already barely profitable and any general price decreases would "not be tolerable":

> "As a refiner and supplier, Gulf is doing its part in attempting to receive a better price for its products at the refinery gate or terminal. This is required to receive an adequate return on its capital employed to this point of the refined product operation. As the marketing arm of Gulf, we must apply the pressure on the other end to reduce the differential between the branded pump price and the non-branded supply cost. This must be accomplished to prevent the gradual demise of the brand system of retail marketing. This does not mean that we are prepared to lower the branded tankwagon price on an across the board basis. *The return on capital employed is not acceptable at the present rate* and a reduction in price would simply not be tolerable under these circumstances."
>
> (Document # 67186-7, September 10, 1970, Gulf, emphasis added)[423]

Thus Gulf recognized that any price reaction taken against the independents would result in a further lowering of their return — a return which was already "not acceptable".

Nonetheless, Gulf recognized its branded sales would continue to decline if it did nothing. It acknowledged that the combined dealer/wholesale marketing margin that the majors had pushed to 'fat', 'comfortable' levels in the late nineteen sixties and in the nineteen seventies would permit substantial private brand growth if the majors took no action:

> "In a study done in 1968 . . .entitled 'Urban Retail Study' [Document # 74527-643] it was concluded that, when the major oil companies' combined wholesale retail margin exceeded about 14 cents per gallon on regular grade gasoline . . .the reseller regardless of how we classify him would have the capability of marketing profitably. The fact that marketing margins on grade 2 gasoline significantly exceed 14 cents for major oil company operation . . .[16¢-21¢] and that resellers are currently growing in market share lends support to this premise."
>
> (Document # 60112, July 21, 1971, Gulf)[424]

Other studies also calculated 14 cents per gallon as the entry-preventing limit price for the marketing sector:

> "Unless, or until, the major marketers in Canada find ways to market gasoline more efficiently so that with a 14 cent wholesale/retail spread they can earn an acceptable profit, we can look for periodic pricing upsets with the accompanying problems of low profits and friction with dealer and governmental organizations. We can also look for jobber activity to increase due to the profit incentive for them to do so."
>
> (Document # 74566, May 27, 1968, Gulf)[425]

Similarly:

"*It would be our feeling that when the combined Marketing/Dealer margin exceeds about 14 cents (slightly more in areas remote from a refinery), we can anticipate that private branders will increase substantially their share of the large urban markets.*"

(Document # 74565, May 27, 1968, Gulf)[426]

"*Significance of Combined Wholesale/Dealer Margin*

In a study done in 1968 and reported in some detail in a Marketing Department presentation entitled 'Urban Retail Study' it was concluded that, when the major oil companies' combined wholesale retail margin exceeded about 14 cents per gallon on regular grade gasoline — that is when the wholesale marketing margin plus the dealer spread, combined, exceeded 14 cents — the reseller market share would be expected to increase substantially at the expense of the major brands. . . .in each of the years since 1967, the combined wholesale/dealer margin has exceeded the 14¢ figure. Furthermore, these margins have been increasing each year and are currently 18.1¢ per gallon in Winnipeg and 18.3¢ per gallon in Calgary. The fact that the Private Brand Market Share has been increasing at an annual growth rate of 23.5 per cent in the four major urban centres during this time . . .lends support to Marketing's premise.

"Regardless of whether Marketing's criterion of 14¢ per gallon is high or low as a yardstick of the price spread at which it becomes profitable for Resellers to penetrate the market, there is no doubt that on current margins of about 18¢ in Western Canada, Resellers are growing and prospering.

"The real criterion, of course, is not the major oil company margin but the differential between the resellers' purchase price of product and the majors' pump price less Provincial Road Tax. It was seen in Table 8 that this 'Realization Under Major Brand Pump Price' generally amounts to between 16¢ and 17¢ per gallon. . . ."the margins available to the larger resellers are sufficient to enable them to discount their retail prices by several cents per gallon below major retail prices and still have a retail margin very close to those available to major brand dealers. Furthermore, these discounted retail prices are utilized as a lever by the resellers to generate volume which, in turn, increases the reseller's utilization of his capital investment and labour."

(Document # 71529-30, September 9, 1971, Gulf)[427]

Perceiving the entry limiting spread to be 14 cents per gallon between independents' acquisition costs and branded prices, the Gulf marketing organization was faced with designing a response to the independents. Both decreasing Gulf's branded pump price and increasing the wholesale price charged to independents were considered:

"There is concern over the inroads being made by the discounter in the retail market. Examination of the facts suggests that the substantial increase in discounting which is taking place in Canada can be attributed to the price spread between the pump price at major brand outlets and the price at which the discounter is able to purchase product. *If the spread of discounting is to be checked, one of two events must take place; either the pump price at major brand outlets must be reduced or the discounters supply price increased or a combination of both.*"

(Document # 67186, September 10, 1970, Gulf, emphasis added)[428]

However, the following document indicates that Gulf saw the effectiveness of its policies differing between the short and long run:

> "Methods of Containment of Expansion of Private Brand *Retailing*
>
> The growth of the Private Brand market share presents the major oil companies with a dilemma. The major oil company, saddled with a high investment in retail facilities . . .cannot meet the resellers price without, in the short term, accepting a lower return on its investment. *For the longer term the prospects for profit improvement appear to hinge upon one or a combination of the following events occurring*:
>
> (a) A substantial increase taking place in the price at which resellers can purchase products relative to the majors Dealer Tank Wagon price.
>
> (b) The major oil company being able to bring its costs of marketing into alignment with the reduced margins needed to stem the rapid growth of the reseller.
>
> *To be effective, it will be necessary to narrow the wholesale/retail spread from around the present 16 or 17 cents per gallon margin to, say, 14 cents per gallon* using Marketing's criterion as a valid figure."
>
> (Document # 71531, September 9, 1971, Gulf, emphasis added in last paragraph)[429]

In sum, Gulf recognized that in the long run, it might be forced to become more efficient, or it might be able to raise wholesale prices in order to reduce the spread between its brand and the independents' pump prices; in the short run, the only way it could counter the threat of entry was to reduce pump prices and accept a lower rate of return. Of course, if this was sufficient to discipline the independents, the long run policy would not have to be implemented. The evidence indicates that, previously, the implementation of short run disciplinary policies had been sufficient to permit the branded sector to restore its margins.

The short run solution considered by Gulf involved a double-edged squeeze of the independents. By dropping branded prices and by increasing wholesale prices it was felt the independents could be countered. This is again emphasized in the following Gulf quotation:

> "*In order to limit the growth rate of the Private Brand Retailers*, there are a wide variety of alternative strategies that could be employed by Gulf Canada in the short term,. . . These short term strategies generally involve either:
>
> (a) increasing the price at which Resellers can purchase product.
>
> (b) reducing the pump prices of gasoline.
>
> *The objective of each of the above strategies is to reduce the combined wholesale/retail margin to the point where it will be unprofitable for Resellers to continue their rapid expansion.*"
>
> (Document # 71533, September 9, 1971, Gulf, emphasis added)[430]

Therefore Gulf, like Shell, devised a policy that would 'squeeze' the independents. Because it controlled excess refinery capacity in the West, Gulf felt that its plans to increase wholesale prices would be successful in that region

at least. Even so, it planned to decrease its pump prices to stop the growth of the unbranded sector:

> "Recognizing that in the foreseeable future Gulf will control most of the surplus refining capacity in Western Canada it is our feeling that despite this fact it is unlikely *the necessary squeeze on reseller margins* can be brought about entirely through bidding up the price on reseller supply: Action will also be required to bring about a reduction in pump prices."
>
> (Document # 60119, July 21, 1971, Gulf, emphasis added)[431]

(d) *Gulf's Reasons for Choosing Consignment*

Although Gulf had decided to squeeze the independents in order to confine their growth, it still had to choose a specific programme. The available options included second brands, cross-merchandising or some type of subsidy programme. A leading instrument used by other major marketers "to combat discounters" (Document # 69427),[432] as Gulf's marketing department recognized, was the development of 'second and third brand' outlets:

> "Esso operates Econo and Gas for Less outlets, Shell operates Gas Mart and Texaco operates Regent. Sunoco also have debranded outlets known as Consumer Fuels. The pricing policy on all these outlets is to compete with private brand outlets in their areas at the same price level. Shell, Texaco and Imperial have taken all posted price increases at their branded outlets and used the debranded facilities for competing with discounters. Gulf does not have this flexibility."
>
> (Document # 69427, April 10, 1972, Gulf)[433]

Throughout this section the theme has been developed that each of the majors dovetailed their strategy to that being followed by the other members of the oligopoly. Gulf is no exception. It carefully evaluated the actions of each of the other majors and then adopted a parallel course of action. While not identical, its strategy reinforced what it understood to be the objectives of the others.

Gulf appreciated that the entry and expansion of independents had led the majors to diverge from their traditional pattern of adopting identical marketing strategies—'operating under a major brand price umbrella' with little price competition — in favour of a variety of policies designed to respond to entry. The latter ranged from "highly aggressive postures to modest response" (Document # 69271).[434] Nevertheless, the general strategy adopted by each major was the same. The majors attempted to maintain the branded network in its basic form but to participate in the lower priced market. The following document was written in 1972 as part of a policy study for Gulf's 'Servico operated facilities at strategic locations'. It indicates Gulf's understanding of the importance that the majors placed on maintaining the old high cost branded system:

"From even an abbreviated description of competitive activity it is clear that the past 5-8 years have been significant departure from the traditional major brand strategy which was characterized by a network of standard type service stations operating under the major brand price umbrella. *We can describe competitors strategies as attempts to maintain the major brand system of marketing while at the same time endeavouring to participate in a controlled fashion in the private brand market*. The strategies of the major brands are no longer identical but clearly differentiated on the basis of

— network design e.g. second brands, facility types

— pricing strategies which range from highly aggressive postures to modest response activities."

(Document # 69271, June 21, 1972, Gulf, emphasis added)[435]

The same document described how Imperial aimed not only at maintaining branded price levels but also at entering the lower priced markets:

"Esso activity suggests a form of market segmentation whereby:

— the *Esso* brand maintains the characteristics of major brand marketing. A program of diversification has been continued with the recent accent being on carwash development versus their earlier diagnostic concept. Branded dealer price levels have been maintained with crossmerchandising through their carwash facilities.

— the *Econo* brand, catering to the price conscious consumer, has been developed as a specialty type gasbar which combines gasoline service with a substantial line of small automotive and hard goods, and in some cases groceries. *Substantial capital and resources have been diverted to this brand* and we would anticipate this program will continue. It is particularly significant that recently some Esso 3 and 5 star facilities have been converted to the Econo brand and most of their 1972 capital program seems to be oriented to this brand.

— the *Gas for Less* sign and even unidentified outlets provide Esso with further flexibility in *acute price areas*."

(Document # 69268, June 21, 1972, Gulf, emphasis added)[436]

Gulf's understanding of Imperial's strategy was that its branded network would be used for price leadership while its second brand network would attempt to control the expansion of the independent sector. Control of the independent sector implied an ability to influence its price movements and to coordinate them with movements in the branded sector. The following excerpt illustrates Gulf's understanding that Imperial would be using its major brand for "price leadership":

"*MOTOR GASOLINE RESELLER MARKET — PRAIRIES*

Mr. R.H. Hall briefed the meeting on the background of the study. Mr. S.F. Ralph then reviewed the 'Executive Summary' prepared for the joint meeting.

. . .

"The group discussed the use of a two brand strategy by Imperial. *The Econo brand is used to directly meet reseller competition while the Esso brand provides price leadership.*"

(Document # 66186, October 4, 1971, Gulf, emphasis added)[437]

While this document indicates that Imperial's second brands were used 'to meet' independents, the disciplinary nature of Imperial's second brand is further elaborated upon in the following Gulf document:

"Their [Imperial] strategy appears to be to keep the Esso brand relatively free of the discount market while at the same time develop a single separate price brand (Relais in Quebec, Econo in the rest of Canada) which can be used as *a weapon against the unbranded price discounters* where necessary."

(Document # 72354, September 30, 1969, Gulf, emphasis added)[438]

Gulf also indicated that it perceived the other major marketer — Shell — to have the same objectives as Imperial. As early as 1970, Gulf observed that Shell, along with Texaco and Imperial, were developing second brand networks:

"1. With the current high spread between refinery gate and/or off-shore product cost and the major brand pump price umbrella, the profit incentive for the unbranded — price discount marketer is at an all time high. *Action and reaction to this enviroment [sic] are expanding* into more retail market areas causing a downward movement of pump prices, volume of sales, or both at conventional service station facilities.

"2. Esso, Shell and Texaco are expanding their use of subsidiary brand names to compete on a price discount basis. Esso introduced their Econo brand in Hamilton, Toronto and Montreal markets, *Shell is converting some of their major brand outlets in Hamilton and Montreal to the Beaver and Alouette* brand Texaco has converted some of their signage in Hamilton to Regent.

. . ."

(Document # 67231-2, July 3, 1970 Gulf, emphasis added)[439]

"3. The major competition — Imperial and Shell are examples — are moving to meet the discount gasoline retail marketers through the establishment of their own discount brands. Such names as Relais, Econo, Regent and Beaver are now appearing in Quebec and Ontario Divisions.

. . ."

(Document # 64957, June, 1970, Gulf)[440]

While the major brands were all adopting essentially the same second brand policy, it was Shell and Imperial, in Gulf's opinion, who were leading the way:

"Major brand marketers began reacting to severe price competition [in Quebec] in 1972 led by 2nd brand conversion by I.O. & Shell."

(Document # 72521, June 12, 1973, Gulf)[441]

More important than Gulf's perception of the general trend to establish second brand networks by others is its perception of the way in which the branded and unbranded networks were used jointly as marketing strategies. Together those companies which had extensive second brand networks attempted to maintain branded prices while preventing the independents from expanding further. Gulf recognized that Shell, like Imperial, attempted to lead prices upward by using the brand for price leadership and by establishing second brand operations to price against the independents as the branded prices were moved upwards. A 1972 document describes the extent to which Shell and other companies were following this practice:

> "Another development in the market in the past five years is the emergence of second and third brand outlets operated by the major marketers.
>
> "Esso operates Econo and Gas for Less outlets, Shell operates Gas Mart and Texaco operates Regent. Sunoco also have debranded outlets known as Consumer Fuels. *The pricing policy on all these outlets is to compete with private brand outlets in their areas at the same price level. Shell, Texaco, and Imperial have taken all posted price increases at their branded outlets and used the debranded facilities for competing with discounters.*"
>
> (Document # 72630, April 10, 1972, Gulf, emphasis added)[442]

While the major brand was to be used for price leadership, the second brand networks, Gulf recognized, were not meant to just fill out the product line, by offering the price-conscious consumer lower prices with reduced levels of service — as was done by the independents. They were to be used as a temporary tool to discipline the independents. This is made clear in a 1972 memorandum that outlined the way in which Shell intended to control prices in both sectors. Gulf correctly recognized that Shell had selectively implemented, in its branded network, commission operations—"Cooperation"[1]—so as to "control prices in the branded market":

> "At present there are 100 commission operated outlets in the Shell Oil retail network in Ontario. Twenty-five of these outlets are in Toronto.
>
> "The objectives of establishing commission operation appear to be:
>
> (1) *To control price.*
>
> (2) To be prepared to continue a controlled operation if the competition act, as presently outlined, is put into effect.
>
> . . .
>
> "Shell's intention is to participate as market leader in both the branded and unbranded markets. *They will use 'C' control for the branded market.*"
>
> (Document # 75095, May 8, 1972, Gulf, emphasis added)[444]

1. Gulf perceived IOL to be adopting the same policy (Document # 77114-5, July 4, 1972, memo from T.B. Simms to W.H. Griffen re: Implications of the Competition Act).[443]

While commission-operated stations were to be used to control the branded market, Gulf perceived Shell's second brands as having the same effect in the unbranded sector.

Equally important, Gulf understood the second brand tool to be a temporary measure that, in combination with control in the branded sector, was intended to be used to increase prices:

> "Shell's intention is to participate as market leader in both the branded and unbranded markets. . . .They will use Beaver and Gas Mart outlets in the unbranded market. In some cases, they can foresee an outlet transferring from a Shell brand to a Beaver brand and back to Shell.
>
> "*Their intention appears to be to gain control of as much supply of gasoline as possible in both the branded and unbranded markets and in that way control, and eventually, improve realizations.* Their Gas Mart operations are used as a temporary measure to keep jobbers out of the market."
>
> (Document # 75095, May 8, 1972, Gulf, emphasis added)[445]

Gulf's observation on the temporary nature and the object of 'market stabilization' inherent in Shell's second brand activity, is further emphasized in the following Gulf document:

> "Shell dealers have been advised that the substantial conversions to Beaver are in order to 'stabilize the market' and that the outlets at some future point of time will be re-branded to Shell."
>
> (Document # 75093, February 22, 1972, Gulf)[446]

Although the objectives of the second brand systems adopted by the other majors corresponded to the objectives that it had set for its own marketing department, Gulf chose not to develop a large second brand network itself. Gulf's decision not to engage in the development of an extensive second brand network was taken as early as 1970. One reason for Gulf's decision was its feeling that the second brand pricing policy being adopted by others could not be justified on the basis of cost savings. Background studies in 1969-1970 performed by Gulf emphasized that a conventional outlet "rendered obsolete" by price competition could not be operated profitably simply by "changing the sign and lowering the pump price":

> "In the majority of cases, an existing asset rendered obsolete by discount price competition and/or better full price competition cannot be salvaged by changing the sign and lowering the pump price."
>
> (Document # 67206, July 3, 1970, Gulf)[447]

> "—The net gain in volume by direct discounting through the small conventional outlet appears not to result in an increase in net contribution since the volume gain equals the contribution per gallon loss."
>
> (Document # 67222, July 3, 1970, Gulf)[448]

Secondly, Gulf felt that second brands would not result in much of a cost saving — only 2 to 3 cents per gallon:

> "If we can assume then that the value of the branded and non-branded difference to the consumer is equal to the incremental company cost of say 2¢ per gallon, *there is no real marketing advantage of establishing controlled non-branded outlets* since the other distribution costs, refinery to outlet, administrative and overhead costs will remain unchanged."
>
> (Document # 67200, July 3, 1970, Gulf, emphasis added)[449]

> ". . . the use of a subsidiary brand name to market a different package of values is a legitimate marketing device. For example, in lieu of the advertising and credit card benefits which accrues to the major brand dealer, it is reasonable to transfer product to a subsidiary brand station at say 2-3 cents per gallon below the branded dealer tankwagon price. *A wholesale price difference significantly larger than 3 cents would be difficult to substantiate from the company and branded dealer point of view.*"
>
> (Document # 73930, undated, Gulf, emphasis added)[450]

Not only did the Gulf studies indicate that the cost saving of second brand operation by a major was minimal but they also noted that Gulf was unlikely to be able to operate a discount network as cheaply as independents:

> ". . . we view Gulf's use of a subsidiary brand as having to overcome the following handicaps:
>
> . . .
>
> — *It is extremely doubtful that Gulf can incorporate in its marketing organization a distribution system as penny conscious as that of a private brand jobber.*
>
> — The problems related to subsidiary brand operations tend to absorb a disproportionate amount of management time."
>
> (Document # 73931, undated, Gulf, emphasis added)[451]

As a result, Gulf categorized the second brand programme being followed by the other majors as a "big stick" approach — a reference to its predatory or disciplinary nature.

A third reason for Gulf's dislike of the second brand approach was its feeling that there was a good chance that the general adoption of this policy by too many majors would actually spread price competition:

> "In some quarters and by some other major marketers the use of a second brand for discounting purposes is perceived (erroneously we believe) as a *strategy to discourage private branders from entering or expanding their operation.* Regardless of whether it does or not, *the affect on the branded distributor system is the same.* One can argue that if company controlled, the unbranded 'competition' can be lifted or lessened as the market enviroment [sic] demands, *in the long run it does nothing to correct the cause of the problem.* Giving due credit to the resources of the private entrepreneur, the *'big stick' approach* is likely to be less effective than we may think and does not discourage this participation over the long run.

"On the other hand, converting branded facilities to 'non-branded' outlets will *tend to accentuate the problem* because it simply takes more business away from the conventional branded service station rather than from the discount outlet which it is intended to challenge."

(Document # 67198-9, July 3, 1970, Gulf, emphasis added)[452]

With the rapid expansion of the independents, Gulf once again evaluated the possible use of second brands in 1972. Its conclusions were the same: first, that second brands tended to lower prices, not maintain them and secondly, that Gulf could not operate efficiently in this market:

"The purpose of the subject study was to determine if controlled 'D' brand operation can profitably be employed by Gulf to participate in the deep discount segment of the Motorist gasoline market.

"Review of the various parameters of two special market areas in the attached studies indicate that there is not much to be economically gained from rebranding outlets in those very price competitive market environments i.e. the asset utilization can not readily be improved.

"Throughout the year we have discussed with you various factors of the Esso, Shell and Texaco strategy of utilizing a rebranding approach. Two basic points were frequently made:

1. It diminishes the private brand jobber opportunity in the marketplace.
2. It tends to curtail price deterioration at branded outlets.

"*To some extent, Esso's, Shell's and Texaco's action has eliminated the opportunity for a private brand jobber to move into a retail outlet vacated by a major brand marketer. However the effect on the marketplace is the same.* If the second brand or private brand retailer is successful in attracting the large volumes such outlets need to economically survive at drastically reduced margins, brand outlets react. Over a relatively short period of time, the same market situation develops as observed in the Stoufville and Montreal South Shore areas. Certainly the longer term economic prospects of those conditions do not look very encouraging to a company with comparatively high marketing costs at the wholesale and retail level.

"There will likely always be a place for a low cost marketer. *We cannot see how a company like Gulf can match a private brand jobber's cost of operation on a fully controlled basis and we may be better off to participate in the private brand market with less control.*

"In any case, from our work with the Ontario and Quebec Division Motorist Groups we have not been able to identify good opportunities for employing a second brand in two specific market areas.

"The need for further evaluation of the second brand is dependent on our success in gaining back volume under current pricing strategy[1] directives."

(Document # 66958-9, October 2, 1972, Gulf, emphasis added)[453]

---

1. This was the aggressive branded policy which Gulf adopted in September 1972.

Finally it should be noted that the Gulf study indicated that the explanation for the use of second brands by the other companies must be that they regarded these tools as only temporary instruments. The Gulf study on debranding made the following observations:

"A question not part of this study but which arises frequently is why our competitors are opening unbranded or second brand outlets especially in light of the above conclusion. We have considered deep discount or stable low-price areas where the discount price on the average is only 3 to 4 cents below the average major brand price. In less stable areas where the price range is wider the low-price, discount outlet has a better chance to draw volume from the major outlets. In these areas the economics of debrand would be more favourable. However because of this lack of stability in prices the possibility of major marketers reacting and lowering their price and removing the discount outlets advantage, is high. So there is no *long-term* advantage to marketing in this way. *Competitors however may not be looking at this method as a long term solution*. As well a company may be able to price low at these outlets without the same reaction from its own branded dealers that would occur if branded outlets were reduced in price. This frequently causes dealers to complain to their dealer associations and the government."

(Document # 66960-1, October 2, 1972, Gulf, double emphasis added)[454]

"... the two advantages of debrand operation — operating under the major brand price umbrella and fewer problems with branded dealers are short term advantages. One question may remain and that is how long is 'short term' and is there enough advantage in using debrand over this period to warrant the cost. *These costs may involve debranding an outlet and operating it until the market comes known around it then rebranding it again. At least some of our competitors must feel this is a valid strategy*.[1]

"Gulf does not feel subsidiary brand representation is profitable for the following reasons:

1. The short term gains do not justify the cost
2. The reaction pricing policy to be used at branded outlets should prevent discounters from gaining disproportionally large volumes. The policy of *reacting selectively* may reduce competitive reaction compared to a policy of reducing prices in wide areas.
3. The policy of aggressive pricing by Servico outlets should reduce the spread of discount outlets by keeping the price spread low."

(Document # 66962-3, October 2, 1972, Gulf, emphasis added)[455]

Thus another reason for Gulf's decision not to develop a widespread second brand network was that it recognized these brands were only being used as temporary instruments by the other majors.

The fact that Gulf rejected an extensive second brand network did not deter it from developing a few such stations. In 1968, Gulf operated ten

1. Shell did this with Beaver.

different brands in the Canadian discount market — Royalite, Western, Paragas, Ideal, Canadian, Globe, Flash, Gunning, Miller and Empire. Generally, Gulf's participation in the discount market did not reflect a planned approach like Imperial's. It was simply the result of a large number of acquisitions over the years (Document # 72354).[456] However, some of the stations were used in areas of "depressed prices"—areas of competition generally caused by independent activity:

> "Gulf Canada maintains only a very few 'off-brand' Flash or Gunning Oil stations in Ontario with prices slightly below the Gulf stations. *These are mainly in areas of chronically depressed prices.*"
>
> (Document # 75024, February 11, 1972, Gulf, emphasis added)[457]

Nevertheless Gulf, like Texaco, concentrated less of their efforts in this area. In December 1972, whereas Imperial and Shell had 81 and 82 unbranded stations respectively, Gulf had only 29 and Texaco 28 (Document # 45784).[458]

As was described in previous sections, by 1972, as the majors generally adopted even more aggressive disciplinary policies against the independents, Gulf again chose not to rely upon second brand operations during this period. Many of the reasons for this were the same as those described above. But, there was an added dimension to the market that influenced Gulf's actions at this time. By the time Gulf decided to re-evaluate its policies in 1972, even the short term benefits of second brands that were used by Shell and Imperial extensively between 1969 and 1972 to control the growth of independents had disappeared. The emphasis in the other majors' strategy had changed from the use of second brands to the use of the brand against the independent sector. Examples of Shell switching to consignment in 1972 in such areas as Montreal in response to the development of branded competition have already been cited. Since Gulf's major shift in policy was formulated in 1972, it also chose a subsidy programme for the brand rather than the expansion of its small second brand network. The following quotation summarizes Gulf's position on second brands at this time:

> "THE FIRST CONSIDERATION WAS WHETHER WE SHOULD DEVELOP AN AGGRESSIVE SECOND BRAND METHOD OF MARKETING.
>
> "THIS LOOKED LIKE AN EASY OUT BECAUSE SHELL AND ESSO WERE USING A SECOND BRAND.
>
> 1. A DETAILED STUDY FROM 1969 AND TWO CURRENT STUDIES IN HISTORICAL LOW PRICES AREAS IN ONTARIO AND QUEBEC COULD SHOW NO CLEAR ADVANTAGE IN SECOND BRANDING. THIS STUDY INVOLVED SPECIFIC STATIONS IN SPECIFIC AREAS AND THE RESULTS PROJECTED FROM MOVING PRICE ON A BRANDED OR SECOND BRAND BASIS.
> 2. THE SHORT TERM ADVANTAGE OF A PRICE NAME LIKE 'ECONO' WAS OVERWEIGHED BY THE LONG TERM ADVANTAGE OF A BRAND NAME (QUALITY, CREDIT, GUARANTEE).

3. THE LONG TERM VIABILITY OF MARKETING LOWER MARGINS IS CRITICALLY DEPENDENT ON HIGH VOLUME FROM SUCH LOCATIONS.

   IF SECOND BRAND IS CONSIDERED ADVANTAGEOUS THEN EVENTUALLY ALL OUR KEY OUTLETS WOULD BECOME SECOND BRAND.

   IT IS VERY APPARENT FROM THE ACTIVITY THIS YEAR IN ONTARIO DIVISION THAT ONLY THE STATIONS THAT HAVE THE REQUIRED LOCATION OR FACILITY TO MOVE LARGE VOLUMES ARE GOING TO SURVIVE WHEN THE MARGINS NARROW.

4. *THE TRADITIONAL UMBRELLA GIVEN TO SECOND BRAND AND PRIVATE BRANDERS IS RAPIDLY DISAPPEARING.*

   AGAIN, ONTARIO DIVISION'S EXPERIENCE INDICATES THAT A 2¢ UMBRELLA IS AS MUCH AS ANY LARGE SECOND BRAND OR PRIVATE BRAND IS GETTING.

"FROM THIS OUR DECISION WAS TO CONTINUE OUR PRESENT ONE BRAND POLICY."

(Document # 69581-3, November 30, 1972, Gulf, emphasis added)[459]

Instead of second brands, Gulf chose to rely upon a subsidy programme — the same course of action that it had relied upon in the early nineteen sixties to stem the growth of independents and the same policy it had continued to use to react against occasional outbreaks of price competition since then. This policy is the focus of the next section.

e) *The Disciplinary Nature of Gulf's Consignment Programme*

Gulf's earlier consignment programme was defensive in nature—"it is not company policy to lead in the downward revision of prices" (Document # 75133).[460] It was a temporary policy that permitted Gulf to meet independents, and it was revoked as soon as competition from this source ended. It did not lead Gulf and the other majors to revamp their marketing system and deliver gasoline at the lower margins that the independents had demonstrated were viable.

Evidence that these policies were intended to be temporary in nature disproves the contention that the majors meant to use them to develop new more efficient vehicles for distribution in the face of demonstrated demand for discount service by the consuming public. Such was not the purpose of these schemes — as their very mechanics prove. For instance, the following Gulf quotation indicates that the scale of commissions paid to dealers under consignment agreements was *designed* to have the effect of encouraging dealers to raise their prices:[1]

1. A similar motivation was quoted from a Shell document in a previous section.

"Coincident with this price change to the Retail Class of Trade, an immediate review of our current sliding scale of Dealer margins should be instituted. *We would emphasize in this connection that this sliding scale was originally designed to encourage Dealers to increase pump prices at every opportunity, and particularly when no posted price changes were involved.* In other words, it was not intended that Dealers obtain a higher margin merely because posted prices increased, and the intent was to make it as attractive as possible to have pump prices revert to levels that would no longer require subsidy support."

(Document # 63885, March 1, 1971, Gulf, emphasis added)[461]

The fact that Gulf continued to use the sliding scale arrangement into the early nineteen seventies[1] suggests, therefore, that its motivations did not dramatically change between the earlier and the later period. The strategy was still conceived to be temporary in nature and intended to encourage an increase in prices.

To appreciate the effect of Gulf's actions, at this time, it must be recognized not only that Gulf reacted to independents with the intention of moving prices back to higher levels after the threat of price competition ceased but also that it was not the only major to do so. Throughout this period, Gulf followed the actions of the two largest majors carefully and reacted with price support in step with their actions:

"Gulf has traditionally followed Esso and/or Shell in extending price support to dealers. Until the introduction of Gulf's revised Price Support Policy [September, 1972], Gulf did not have as many outlets below major price as do the other major companies, excluding Second Brand operations in either case."

(Document # 67272, Undated, Gulf)[467]

Therefore Gulf's actions reinforced the strategy that was adopted by both Shell and Imperial. Since Gulf followed carefully the policy of Imperial and Shell as to the area where subsidies were to be applied, it can be said to have contributed consciously to the efficacy of the disciplinary policies being invoked against the independents by these firms.

During the period prior to 1972, Gulf applied its price support programme to relatively large geographic areas — primarily to avoid price discrimination charges under the Combines Investigation Act:

"Price subsidies are given generally to a whole geographic area subject to price competition without regard to different types of outlets in the area. . . .

"The reason subsidies have been extended over whole areas was that the company wanted to be careful not to violate price discrimination laws in the Combines Act. This is important if the method of subsidizing is via temporary competitive allowances. . . .

---

1. That Gulf used the sliding scale arrangement in Ontario in 1969 is evidenced in Document # 71010-11.[462] Other documents referring to sliding scale commissions include # 69451[463] (Ontario, December 1970), # 70983-5[464] (Lethbridge, Alberta, May 1971), # 70979-81[465] (Bonnyville, Alberta, June 1971), and # 69432[466] (Ontario and Montreal, 1972).

. . .

"The legal problems around extending subsidies to whole geographic areas can be eliminated by using consignment selling. Most of our price subsidies are extended using consignment but we still extend these subsidies to whole geographic areas."

(Document # 69431-2, April 10, 1972, Gulf)[468]

Therefore even when Gulf's primary subsidization instrument was consignment, it was extended on an area basis that was relatively wide prior to 1972. However, like Shell, Gulf recognized that continuing to follow this policy was going to be too costly if it was to counteract the influence of the independents:

"...TO REACT ON AN AREA BASIS, THAT IS REVISING PRICES AT ALL STATIONS IN A MARKET AREA, MEANT A LOSS OF REALIZATION AT MANY STATIONS THAT BECAUSE OF THEIR LOCATION AND LACK OF POTENTIAL COULDN'T POSSIBLY GET A SATISFACTORY VOLUME INCREASE TO JUSTIFY LOWERING THE PRICE."

(Document # 69581, November 30, 1972, Gulf)[469]

"This policy has prevented us from being selective in reacting to price competition. It has made it necessary to support convenience oriented outlets when it is really not to our advantage or the dealer's advantage to do so."

(Document # 69431, April 10, 1972, Gulf)[470]

As the need to contain the independents became greater in late 1972, Gulf adopted a two part policy which involved a far more selective use of consignment along with specific guidelines as to the price difference to be set for different competitors and different facilities. The following excerpts from Gulf's strategy plan outline the price differentials to be used and emphasize the fact that the pricing policy was directed against discount gasoline outlets[1]:

"Ample evidence has been presented elsewhere of the high growth rate of discount gasoline outlets at the expense of Gulf and other major marketers in the past ten years.

"The level of service provided by the major brand companies and their relatively high investment in low volume facilities has provided the discounter with an opportunity to market under a different strategy based on a substantial difference in pump price. In comparison the pump prices of the major brand retailers have traditionally tended to be the same at all locations. The result has been that volume has shifted to the discounter.

---

1. The strategy was formulated in draft form in April, 1972 (Document # 69421-60);[471] by September, 1972, these were issued as formal guidelines to regional managers with the instructions that there had to be "substantial reasons" for not following them (Document # 70649-60).[472]

"In order to counteract this trend the differential in pump prices between Gulf branded dealers and discountng outlets should be reduced. Without, at the moment, specifying under what conditions this reduction in pump prices should occur, the following guidelines are suggested as reasonable differentials between Gulf and other competitors based on comparative service level and advertising image.

	Difference Gulf-Other *¢/gal.*
Gulf & other majors	0
Gulf & other minors	0 - 2
Mass-Merchandisers	0 - 2
Private Brands	2 - 4"

(Document # 70651-2, September 6, 1972, Gulf)[473]

"The guidelines should be Gulf's *first reaction* to a competitive change. *They are designed to make our pricing policy more aggressive* in order to gain back market share lost to all types of discounting outlets. As such these guidelines represent a *departure from a policy of following the majors on retail price changes. We are no longer prepared to concede that market conditions force us to follow the leader.*

"The guidelines are meant to be used when considering prices at the time a competitive change occurs, not after it has been in effect for some time. To combat price differentials which have been in effect for a period of time and which do not fit our guidelines it *may be necessary to meet the competitor directly for a short period* prior to returning to a differential as indicated by the guidelines."

(Document # 70653-4, September 6, 1972, Gulf, emphasis added)[474]

"As well as establishing a price differential for competitor type the following price differentials are reasonable when applied to facility types:

Regular Service Station — Self Serve 2-3¢
Regular Service Station — Carwash/Gasbar 0¢

"The guidelines are meant to be interpreted in two parts. The first section states a differential based on the type of competitor, irrespective of facilities involved. Similarly the differentials for facility type are independent of the competitor involved. After the two differentials have been determined, they are added together to get an overall differential which represents our view of the result of normal market forces.

(Document # 70653, September 6, 1972, Gulf)[475]

The price guidelines outlined above were to be implemented on a selective basis. Contrary to previous policy, they were not to be granted to whole trading areas — only to those outlets that suffered from price competition. The following excerpts from Gulf documents illustrate that the key element in Gulf's new pricing policy was to be its selective application:

"Examples:			*Differential (Gulf — Other)*		
Competitor Type	*Gulf Facility*	*Competitive Facility*	*For Competitor*	*For Facility*	*Total*
Major	3 bay or gasbar	3 bay or gasbar	0	0	0
Major	Carwash/ Gasbar	3 bay or gasbar	0	0	0
Major	Self-Serve	3 bay or gasbar	0	–2 to –3¢	–2 to –3¢
Minor	3 bay or gasbar	3 bay or gasbar	0-2¢	0	0-2¢
Minor	Carwash/ Gasbar	3 bay or gasbar	0-2¢	0	0-2¢
Minor	Self-Serve	3 bay or gasbar	0-2¢	–2 to –3¢	–3 to 0¢
Private Brand	3 bay or gasbar	3 bay or gasbar	2-4¢	0	2-4¢
Private Brand	Carwash/ Gasbar	3 bay or gasbar	2-4¢	0	2-4¢
Private Brand	Self-Serve	3 bay or gasbar	2-4¢	–2 to –3¢	–1 to 2¢"

(Document # 70653, September 6, 1972, Gulf)[475]

"A key element in implementing these guidelines is that the price assistance is to be extended only to those outlets suffering from competition and which will benefit from assistance. *Assistance is not to be extended to whole geographic or trading areas*. Those outlets which will benefit most from assistance are generally arterial locations catering to price-conscious, transient buyers. Thus each outlet in a trade area should be considered individually when giving assistance so that only those outlets which are sensitive to price changes receive assistance to meet the competition."

(Document # 70654, September 6, 1972, Gulf, double emphasis added)[476]

"The vital part of implementation is the *selectivity* necessary in granting assistance to outlets."

(Document # 70649, September 6, 1972, Gulf, emphasis added)[477]

"THE VITAL PART OF IMPLEMENTATION IS THE *SELECTIVITY* NECESSARY IN GRANTING ASSISTANCE TO OUTLETS."

(Document # 69586, November 30, 1972), Gulf, emphasis added)[478]

Because of its desire to apply price subsidies in a selective fashion, Gulf chose consignment over temporary allowances for two reasons. Consignment could be used to circumvent both the resale price maintenance and the

price discrimination clauses of the Combines Investigation Act. By putting a dealer on consignment, Gulf could set the retail price directly. As such, it did not have to worry about whether it was discriminating against other competing dealers, since there was no sale to the dealer being placed on consignment:

> "If the competitive situation is such that Gulf thinks assistance to the dealer is warranted, two methods to provide this assistance are available. One method involves putting the dealer on consignment (with his consent). Under this arrangement the product belongs to the company until it is sold to the customer so the company no longer sells to the dealer. This makes it possible for the company to set the retail pump price and to do so in such a way that pump prices and dealer commissions can be different for outlets in the same competitive area and permit variations of the pump price to meet different competitive conditions in the same area. The other method involves instituting a temporary competitive allowance. The company continues to sell the product to the dealer under this arrangement so the allowance must be offered to competing dealers in a trade area.
>
> "Since a key element of this policy is the *selectivity* necessary in providing assistance only to dealers who are suffering from competition, *consignment selling is preferable whenever possible.*"
>
> (Document # 70654-5, September 6, 1972, Gulf, emphasis added)[479]

Thus consignment permitted Gulf to"... set different pump prices and or commissions for dealers in the same general area" (Document # 69435).[480] Other documents are equally explicit as to the selective manner in which consignment was to be used at this time. As with Shell, Gulf's primary objective in using subsidies on a selective basis was to *contain* the price competition arising from the independents. For instance, Gulf indicated that in response to a "continuing price war" in Ottawa, its confinement of the use of consignment to selected locations in 1972 was meant to contain the expansion of the lower price zones:

> "The intent of R.R.P. [consignment] is to support retail revenue at strategic locations. If we lose sight of this objective we contribute to expansion of price depression."
>
> (Document # 75084, June 13, 1972, Gulf)[481]

Throughout the next year, Gulf continued to emphasize that subsidies were to be used selectively. For instance, in March of 1973, the Director, Motorist Market of Gulf addressed a letter to regional personnel emphasizing the need to be even more selective — to focus only on those stations that were in the most competitive situations:

> "*Price Management*
>
> We all must learn from our experience. In this regard, we all have likely made pricing response decisions which were not optimum. To keep ahead in this game we must continuously improve our decision making based on what we have learned and should not hesitate to correct or reverse earlier decisions.

"Viewing the monthly price support information, it would appear that we are not selective enough in meeting price competition. . . .

"The basic objective of the September price support policy was to get price management in the field and deal with each account objectively. *The onus is on you to keep this control on pricing.*"

(Document # 69404-5, March 2, 1973, Gulf, emphasis added)[482]

Therefore, Gulf's use of consignment was substantially changed as of 1972. One of the themes that has been developed in the marketing section is that the nature of the oligopolistic rivalry that prevailed during most of the post-war period militated against price competition; it was the development of the independent sector that finally led the branded price structure to collapse. In turn, the majors each adopted parallel or similar policies to discipline this sector and to restrain its growth. The following document outlines the reason Gulf adopted a more selective consignment system in 1972. It emphasizes once again that the majors were reluctant to compete and that the threat of price competition had developed only as a result of entry—"the make-up of competitors" had changed:

"With the advent of increased price competition and changes in competitors' pricing policies, there is an urgent need to review and update Gulf's price support policy. . . .

. . .

"Our current written policy, number 1020, was composed in January, 1961. Since then the make-up of competitors has changed significantly. *Also, over the last three to four years, Gulf and other major marketers have been reluctant to meet price competition with the brand name.* As a result, the spread between branded and non-branded pump prices has been increasing in many market areas and branded outlets have gradually lost volumes.

. . .

". . . the problem is most acute in Quebec and Ontario, . . . "

(Document # 69421-2, April 11, 1972, Gulf, emphasis added)[483]

That margins had reached high levels by 1971 is shown in Table 29 below. Gulf's own analysis indicated that total wholesale/retail margins of about 14 cents per gallon (based on the assumption that brands could stand a 5 cents per gallon spread) would lead to entry. Gulf's margins across Canada were above this — ranging from about 18 cents in the East to over 20 cents in the West. It is clear then that Gulf's policy, along with that of the other majors, was detrimental in the sense that it was aimed at the maintenance of these high margins. But the predatory nature of the policy has not yet been fully developed. The next section shows that Gulf, like Shell, used its subsidy programme in a predatory fashion with the intent of disciplining the independents in order to raise their prices.

TABLE 29

GULF MARGINS FOR REGULAR GASOLINE
1971
(¢/per gallon)

CITY	*WHOLESALE MARGIN*	*DEALER MARGIN*	*TOTAL*
Halifax	9.2	8.5	17.7
Montreal	9.1	8.8	17.9
Toronto	8.1	9.7	17.8
Calgary	9.7	11.2	20.9
Vancouver	8.0	11.6	19.6

Source: Document # 72631, Gulf[484]

(f) *Predation and Gulf's Use of Consignment*

The price subsidization scheme that developed was, in one sense, the result of the general lack of competition among the majors and the 'comfortable' level that retail and wholesale margins had reached in their distribution network. However, as has been stressed, to the extent that such policies were used to eliminate firms which used alternative modes of distribution or to force them to adopt the high prices of the branded network, then these disciplinary instruments served to reinforce the anti-competitive behaviour of the integrated firms and to permit their high margins to be sustained. The issue, then, is whether these policies involved aspects of predation that were meant to protect the high branded margins.

The concept of predation is often linked to the notion of the deliberate accumulation of losses so as to drive out competitors or to discipline them into accepting higher prices. The aggressive pricing policy that Gulf adopted in 1972 suggests both of these objectives were being followed. For instance, Gulf itself admitted that because of non-price competition, a large number of low volume, low potential stations, had developed that were "not able to compete if margins are narrowed" (Document # 69570).[485] Lowering prices, therefore, had to be done in the full knowledge that losses would be incurred. That this was so is borne out by the following quotation. It indicates that short-term profits were not a criterion that Gulf intended to meet with the new pricing policy:

> "The guidelines on price differentials should be followed for outlets that are viable in the long term and have been identified in a representation plan as keeper locations. For outlets that don't fall into this category assistance may or may not be given depending on which course of action will provide the maximum benefit to the company in the short term. *Short term profit is not a criteria in long term viable outlets where market share is of prime importance.*"
>
> (Document # 70654, September 6, 1972, Gulf, emphasis added)[486]

This statement implies that Gulf meant to price if necessary at a loss in those stations that were to be used against independents. Other evidence substantiates this. For instance, the following quotation indicates that it was Gulf's perception that the cost difference between itself and independents was some 5 cents per gallon:

> "We should also seize the opportunity on the Prairies created by our new refinery capability to reduce the differential between dealer prices and P.B.D. [private brand distributor] prices to about *5¢ per gallon, a level roughly commensurate with cost differences*."
>
> (Document # 73796, January, 1972, Gulf, emphasis added)[487]

The new price policy, when first considered in April 1972, stipulated a difference of between 4 and 5 cents per gallon between Gulf branded stations and unbrandeds (Document # 69429).[488] By the time it was formalized in September 1972 the difference had been reduced to only 2 to 4 cents per gallon. The change in the guidelines is illustrated in Table 30 below. Therefore Gulf, by the end of the year, had established price guidelines that in light of the recognized cost differentials between itself and independents suggest the company would not recoup its long-run costs.

TABLE 30

EVOLUTION OF GULF'S 1972 PRICE GUIDELINES

Category	*Difference (Gulf-Other) ¢/gallon* April/72	*Sept./72*
Gulf & Other Majors (IOL, Texaco, Shell)	0	0
Gulf & Other Minors (BP, Supertest, Fina, Sunoco, Husky, Irving, Golden Eagle, Pacific 66, SOBC)	0–2	0–2
Mass-Merchandisers (Eatons, Simpsons-Sears, CTC, Woodwards)	0–2	0–2
Private Brands ('Better Class') (Econo, Gas Mart, Regent)	3–4	2–4
Private Brands ('Poor Class') (Martin, Spur, Gas for Less)	4–5	2–4

Sources: Document # 69429, Gulf[489]
Document # 70652, Gulf[490]

Gulf revised its price differential guidelines downwards after the operating managers pointed out that the 5 cents per gallon differential would result in a continuing loss of market share. For instance, Gulf's Division Manager in Calgary responded to the original April guidelines by recommend-

ing that Gulf "*meet*" the independents for a period of time. Commenting on the problem of independents, he said:

> "For the most part, this type of Retailer is located in more or less specific areas of the Cities in Western Canada, with the exception of Winnipeg where they have penetrated many sections of the City. I feel that, in areas where there is a heavy concentration of this type of discounter, we should be much more aggressive than the guidelines allow. *We should be prepared to meet them at least for a period of time.* I would suggest that allowing any type of Marketer to maintain a 5¢ spread will have the effect of a continuing erosion of our share of the market."
>
> (Document # 72746, May 8, 1972, Gulf, emphasis added)[491]

This recommendation was ultimately implemented in the September guidelines (Document # 70653-4).[492] It is, therefore, clear that Gulf chose to price in the short run at levels below its long-run costs.

While there is no doubt that this was a short run policy, and that in the long run Gulf might have returned its marketing margins to a level that would cover costs, it should be noted that the most successful predatory policies are those that are expected to have quick results. Nevertheless the fact that Gulf recognized that some improvement in its own efficiency might be required cannot be overlooked. If Gulf had merely intended to lower prices to the level at which it perceived it could operate, then less damage would have been inflicted on the competitive process. But this was not the way in which consignment was used. Instead, consignment was used to force losses upon independents with the intent of causing this sector's prices to increase.

This is illustrated by the way in which consignment was used in 1970 in Sault Ste. Marie. The following excerpt describes the circumstances facing the company and the way in which consignment was used initially to decrease prices in this city in order to force some of the independents operating therein to raise their prices:

> "There are presently six private brand distributors retailing gasoline in the city of Sault Ste. Marie. It is reported two more P.B.D.'s have made application to open additional facilities. This class of trade by the end of 1970 will have obtained close to 19% of a total market of 15,700,000 gallons. Gulf's share will have decreased to 11% in 1970 if we maintain our present retailing price levels.

"*Gulf's Share of Market*		*P.B.D.'s Share*
1968	20%	3%
1969	16%	8%
Est. 1970	11%	19%

> "In 1968 the retail pump price spreads between the major oil companies and unbrandeds was $.0300. The situation continued to deteriorate until spreads have now reached proportion of $.0600 per gallon and at three unbranded outlets is $.0900. This increase in spreads is partly caused by the $.0100 increase in our dealer tank wagon price in July and November of 1969. This resulted in major retail pump prices being adjusted by $.0300 per gallon providing a dealer margin of $.1100 per gallon.

"*OBJECTIVE*

To arrest any further erosion of Gulf's profits and share of market we recommend implementing a price strategy which will result in the unbrandeds not pricing at more than $.0300 below the majors.

"It would be most desirable to retain our existing $.5390 per gallon branded pricing level provided unbrandeds would adjust to $.5090. This event occurring is highly unlikely. However, we do believe by adjusting our prices as described below we can establish a $.5090 retail branded price. We further believe as a result of our action a $.0300 per gallon spread would develop between major and unbranded prices, resulting in a retail price of $.4790 for the unbrandeds class of trade.

"Therefore, the *long term retail pricing objective* to protect our share and profits is as follows: —

Major Brand Retail Price	$.5090
P.B.D. Retail Price	.4790

"*PRICING ALTERNATIVES*

Chart one and two indicate the impact on our contribution over a twelve month period. We list below three pricing alternatives: —

	Contribution Decline
1) Remain as is —	
Majors at $.5390	$37,000
Unbrandeds at $.4790 and $.4490	—
2) Adjust pricing as per chart two —	
Majors at $.5090	—
Unbrandeds at $.4790	$ 8,600

"The contribution of $8,600 is based on an immediate price adjustment by Gulf to $.4790. *We believe at this price level Gulf would be required to remain for not more than a maximum of ten weeks. This is based on the assumption of the unbrandeds inability to survive from a profit stand point beyond that period.* Some time during this period we would revert back to our objective of $.5090.

3) To adjust retail price as per chart one —

Step one	Major Brand Price	$.5090	
Step two	" " "	.4790	$33,224
Step three	" " "	.5090	

"Under this alternative we would place a high probability of all unbrandeds dropping to $.4490 by our adjustment to $.5090. This occurring we would then be required to move to $.4790 to affect our pricing plan. Therefore, *such a move would be less effective and more costly*.

"*PROPOSED ACTION*

Gulf to take immediate steps to adjust our retail pump price to $.4790. *We believe this action will place considerable stress on the unbranded profits, and we*

would therefore expect at this price level we would not be required to stay longer than ten weeks. If our assumption is correct, we would expect the P.B.D. would move back to $.4790 and Gulf to $.5090.

"*ACTION STEPS*

1) *Place all Gulf dealers on Gasoline Consignment Plan.*
2) At $.4790 this will result in an R.R.P. of $.0250 to give the dealers a commission of $.0750 per gallon. If it is necessary to reduce pump prices below the $.4790 level in order to attain our objective, Gulf will guarantee a minimum commission of $.0750 per gallon.
3) At the $.5090 price level the dealers will remain on G.C.P. with Gulf granting a subsidy of $.0150 per gallon. This represents one-half of the drop of $.0300 from the present pump price of $.5390 and will give the dealer a commission of $.0950 per gallon. In the event the dealer increases the pump price above the $.5090 price level the subsidy will be automatically cancelled.
4) We propose to discuss with the dealers, either collectively or individually, the present situation and the inevitable results of maintaining the present dealer margin which will only result in further loss of sales volumes, and eventually the failure of their businesses and Gulf's.
5) The initial move to $.4790 will see us posting signs of the price change at all stations.

"*ADDITIONAL INFORMATION*

Market Potential		15,700,000 gallons
Industry Growth Rate		5.2%
Gulf Sales 1969		2,500,000 gallons
Gulf Share of Market		16%
1968	20%	
1969	16%	
Est. 1970	11%	
Number of Outlets		Total 81
		Gulf 15

"*PRESENT PRICING*

Dealer Tank Wagon $.4290

	Majors	*Spread*	*Unbranded*	*Spread*
Retail Pump Price				
General	.5390	.1100	3 at .4790	.1120
2 Imperial	.4990	.0700	3 at .4490	.0820
4 Texaco	.4790	.0500		
	Plus	.0250		"

(Document # 71065-7, undated, Gulf, emphasis added)[493]

This document is very significant in that it provides direct evidence of Gulf's intent to move the independents' prices upward by using consignment to "place considerable stress on the unbranded profits". But this is not the only

instance of this policy. In 1970, Gulf put its stations in Bonnyville, Alberta on consignment to meet competition from Mohawk — an independent. Head Office approved the implementation of the programme and agreed to a price reduction so that Gulf was only 2 cents per gallon above the independent and noted:

> "*YOU ARE FAMILIAR WITH THIS POLICY IN OTHER PARTS OF CANADA WHERE WE SET OUR PRICE LEVELS AT THIS DIFFERENTIAL OVER UNBRANDED OR MINOR BRAND COMPETITION.* YOU DO NOT MENTION OUR CURRENT RETAIL POSTINGS, BUT PRESUMABLY THEY ARE AROUND $0.5300 AND $0.4800 SO THAT THIS REDUCTION TO $0.4900 AND $0.4400 SHOULD HOPEFULLY EASE THE SITUATION AND RETAIN OUR SHARE OF THE MARKET."
>
> (Document # 71036, August ll, 1970, Gulf, emphasis added)[494]

This instance shows that, as in the case of Sault Ste. Marie, Gulf was willing to drop prices to the independents' level in order to force prices upward. For with the final authorization from head office for a subsidy programme came permission that "if necessary" Mohawk could be "met on the nose" with the understanding that if this was done, the situation would improve in the "near future" (Document # 71039).[495]

Not only does this quotation confirm the predatory nature of Gulf's consignment programme but it also sheds light upon the nature of the mutual interdependence that existed among the majors. It has been argued that the recognition of mutual interest extended beyond an understanding that price competition was something to be avoided; but also influenced the manner in which the majors adopted disciplinary policies aimed at the independent sector. In various sectors of the industry, firms adopted leader and follower roles. In the production sector the leadership role fell to Imperial. In the marketing sector, the position varied depending upon regional marketing shares. But in most cases, the majors chose to abide by the custom that the largest firm was the leader. Since Gulf generally was not the largest, it accepted the leadership of the two major marketers — Imperial and Shell. That it frequently followed these two in implementing its subsidization policies has already been cited. Other evidence indicates that in 1974, Gulf still considered this policy optimal:

> "2. Our pricing strategy should be to move only after the other majors have moved first.
>
> 3. Our prices should be competitive with the higher of Imperial and Shell."
>
> (Document # 136596, May 8, 1974, Gulf)[496]

However, in some areas, Gulf provided leadership. When local Gulf authorities requested permission to implement consignment in the town of Bonnyville, Gulf's Canadian head office requested additional information on the

pricing policy being followed by the other majors in the area (Document # 71038).[497] The response to the query from head office was that Gulf's market potential in Bonnyville was 50 per cent as compared to 35 per cent for Imperial and 8 per cent for Shell and that "the other majors are waiting for us to move" (Document # 71037).[498] This illustrates an understanding that the policy adopted by the leader in a local situation would be followed by the other majors. Parallel disciplinary policies were implemented by a small number of firms in order to exclude entrants that offered a lower priced product. In doing so these firms entrenched the monopolistic conditions that had caused high cost distribution systems and high prices to consumers.

Evidence as to the effectiveness of the disciplinary policies can be found in Gulf's own description of their results. For instance, a March 26, 1973 memorandum (Document # 77299)[499] describes the course of events in Peterborough. In September 1972, Gulf dropped its price to 41.9 cents per gallon and one Gas Canada outlet that had been pricing at 39.9 cents per gallon closed almost immediately, while another — also at 39.9 cents per gallon — lasted until January 1973. By March 1973, Gulf had raised its price to 45.9 cents per gallon and both locations of the independent had reopened under the XL sign and were pricing at 40.9 cents per gallon. Therefore Gulf had succeeded in moving the independent's price up by 1 cent per gallon.

The examples of Sault Ste. Marie and Bonnyville make it clear that Gulf followed the practice of bringing its price to within 2-4 cents per gallon of the independents with consignment programmes even before the events of 1972. The essential change in policy that took place in 1972 involved an increase in Gulf's willingness to apply this policy in more regions of the country as well as to increase the selectivity of its use in each particular area.[1] However, the clear predatory intent to discipline the unbrandeds and to contribute to price strengthening evidenced in the Sault Ste. Marie case has greater importance. For the Sault Ste. Marie experience was a case study conducted as a model for the pricing guidelines that were issued with Gulf's revised consignment policy in late 1972.[2]

---

1. When Gulf implemented consignment in 1970 in Bonnyville, it explained its willingness to do so by the fact that the isolation of this community reduced the cost of the policy. "This is an isolated community, therefore implementation of the R.R.P. should not have any effect on the surrounding communities" (Document # 71029).[500]

2. The Sault Ste. Marie study was prefaced with the statement that it was done "as part of the price support policy and strategic guidelines" (Document # 79223, memo by R.B. Collins, July 5, 1972).[501] The new Gulf policy was entitled "Price Support Policy and Strategic Guidelines for Gulf Brand Retail Outlets" (Document # 79171).[502]

A review by Gulf of the Sault Ste. Marie case study concentrated on documenting the strategy that had been followed in order "to determine its effectiveness for use in other price competitive areas" (Document # 79224).[503] Gulf, in 1970, had decided to reduce its prices to the unbranded level in Sault Ste. Marie to force the lowest priced unbrandeds to increase their prices. The ultimate objective of getting the independents to raise their prices as Gulf moved its prices upwards was achieved by 1971. However, Gulf's review noted that the independents lagged behind with their price increases and they eventually adopted a 4 cents per gallon differential as compared to the 3 cents per gallon differential that Gulf had initially set as its goal (Document # 71064-9).[504] The conclusion of the study was that while Gulf's market share improved, and while unbranded prices were brought up, the unbrandeds did so too slowly for Gulf's purposes (Document # 79232, # 79229).[505, 506] As a result, recommendations were made that Gulf introduce a policy of quicker response to independents and of smaller differentials — in the 3 to 4 cents per gallon area (Document # 79232).[507] This was the upper bound that was eventually incorporated into the strategic guidelines that were adopted for Gulf's consignment programme.

In summary, Gulf's examination of its Sault Ste. Marie experiment brought to light the lesson that it had to price more aggressively to limit the influence of the independents, that it had to react more quickly to price changes in this sector, and that it had to maintain an aggressive price differential when increasing prices. That Gulf used a case study in which disciplinary pricing behaviour was employed to influence unbranded prices upwards in order to formulate its consignment policy is significant; for it confirms that its consignment policy was intended to influence prices in an upwards direction.

Further confirmation that this was its intent is provided by events in 1973. At this time the market tightened considerably — especially in eastern Canada. As the year progressed imports of product to the eastern part of Canada either became unavailable or very costly. In Ontario, all refiners except Shell were in a relatively tight supply position (Document # 69398).[508] Gulf evaluated the effects of its aggressive policy and noted that it had succeeded in drawing sales away from independents:

> "Most of us have had six months' experience with price management under the subject policy. All indications are that we are gradually regaining some of the business which was lost to discounters during the earlier part of the year."
>
> (Document # 69403, March 2, 1973, Gulf)[509]

As has already been outlined in Shell's section, this had the effect of raising prices. The independents were disciplined. Referring to Quebec, Gulf notes:

> "Under the combined influence of higher supply prices to jobbers and *the initiative of Shell and Imperial*, the retail pump prices are increasing throughout the Division:"
>
> (Document # 68786, May 7, 1973, Gulf, emphasis added)[510]

Gulf used the opportunity of the tight supply situation to revise its price discrimination scheme and make it even more selective. Recognizing that independents were having difficulty in obtaining product, Gulf downplayed the threat of their expansion and began to move prices upward at stations that were somewhat removed from the independents. Similar to Shell, Gulf employed a feathering programme and initially subsidized even those stations that were not conveniently located to compete with the high volume independents. The following document indicates that as competition became less intense Gulf moved the price of these stations back up:

> "This then becomes a unique opportunity for us to 'purify' our pricing strategies which we implemented last fall. The basic directions of the Reaction and Aggressive Pricing Policies are:
>
> 1) Be competitive with any retailer in the <u>*immediate*</u> trade area in accordance with the price differential guidelines.
>
> 2) Be selective in extending price support to retail outlets which are:
>
>   a) Keeper locations
>
>   b) Outlets which are expected to economically benefit from meeting such price competition over the longer term.
>
> 3) Price aggressively compared to competition at our potentially high volume locations, at a price level which will maximize Gulf's total profit contribution over the long term.
>
> "At such times as there are significant movements in the market, up or down, we must respond in accordance with these guidelines. *At the present time, this price movement is upwards in many market areas and in most cases we should <u>follow quickly</u> and not drag our heels. In some cases we should probably take the lead in bringing the market up.*
>
> "*More specifically, we believe this is an opportune time to significantly reduce the number of outlets which are on price support*. . . .we believe that now is the time to remove this price support from many of the low volume outlets or in the case of Quebec, raise the pump price by 2¢ to 4¢ at such low volume outlets. *The main benefit from such action will be to reduce the number of price signs which exist in the market today and lead to more realistic pricing in the total market.*
>
> "This should in no way be interpreted as a switch in strategy or policy. *The guidelines for the reaction pricing strategy remain in effect, but with more emphasis on the selectivity aspect.* Also, we want to pursue the aggressive pricing strategy which, from our review, has generally benefited the key, high volume locations. *As the market firms, we should also move the aggressive price up but maintian at least the present differential.*"
>
> (Document # 69398-9, May 8, 1973, Gulf, single emphasis added)[511]

This document exemplifies the predatory nature of Gulf's policy. First, it shows that Gulf's strategy was one of 'reaction pricing'. It was not adopted as a permanent response to new distribution systems. It was implemented only in response to independents and the intent, exhibited by this document, was to move prices up to "realistic" levels as soon as possible. Secondly, Gulf's instructions—"price aggressively at a price level which will maximize Gulf's total profit contribution over the long term" (see above document)—suggests that their aggressive pricing policy in the short term would result in prices moving upwards. Finally, the instructions to maintain the differential as the "aggressive" price is moved up illustrates that Gulf had learned from the Sault Ste. Marie experiment that discipline had to be closely maintained if its goal of price restoration was to be achieved.

Other evidence indicates that there was a general decision to remove subsidies in Ontario as soon as it was possible to do so (Document # 72814).[512] This, in conjunction with the above document, indicates that Gulf's programme was intended as a short-term reaction to the independents. When the independents were forced by the combined squeeze action of most of the majors to raise prices, Gulf reduced subsidies and raised its own prices. The argument that consignment was only implemented in conjunction with a reorganization of the marketing system to facilitate lower prices in price conscious segments of the market is incorrect. Gulf developed and used consignment primarily as a predatory instrument; only if its primary purpose failed, did it intend to rely on consignment in conjunction with a reorganization of its marketing system.

(g) *Conclusion*

The picture of predation that emerges from the actions of the major petroleum marketers is a somewhat broader one than is normally discussed in the literature. Selling below cost is the usual concept described as predation. The picture of the petroleum industry presented here involves elements of disciplinary action as well as the actual implementation of practices normally related to predation. The broader concept illustrated here was recognized in an article by Yamey,[1] who discusses the concept of predation in the following terms:

> "The aggressor may be able to achieve its objective of eliminating or disciplining the rival and of discouraging potential entrants by means of price cutting falling short of predatory pricing as this is defined currently [selling below cost].
>
> ". . . there can be predatory *intent* in price cutting whether or not the aggressor sets its price above or below its costs . . .the common characteristic of predatory price

---

1. See B. Yamey, "Predatory Price Cutting, Notes and Comments" *Journal of Law and Economics*, April 1972, pp. 129-42.

cutting in the broad sense is that it is temporary and that it is in the predator's interest to confine, where possible, the temporary sacrifice of profits to those parts of the market (regions, product varieties, classes of customers) in which the victim is trading."

(Yamey, "Predatory Price Cutting", pp. 133-4, emphasis added)[513]

Accordingly, the broader concept of predation views it as a temporary policy whose purpose is to restrict price competition by the acceptance of short run reductions in profits. The goal of the predator is to move prices back upwards. Therefore a firm may be acting in a predatory fashion when it selectively reduces prices to meet rivals. As Yamey stresses, the distinguishing factor of predation must be found in the *intent* of the action:

"... It must be stressed that it is not possible ...to decide unambiguously whether all examples of temporary price cutting should be classified as predatory or not. The distinction turns not on form but on *intent*."

(Yamey, "Predatory Price Cutting", p. 137, emphasis added)[514]

"The predatory nature of temporary price cutting, where it is present, is a reflection of the aggressor's *intention*, which is to eliminate its rival as an independent competitor, not through the exercise of greater efficiency in the usual sense but through a pricing manoeuvre containing an undertone of threat."

(Yamey, "Predatory Price Cutting", p. 135, emphasis added)[515]

Thus the key to predation is the finding not just that the price cutter intended to eliminate a competitor — for such thoughts must also emanate from legitimate forms of competition — but that the aggressor knew his competitor was more efficient or that the purpose of the elimination of competition was to increase prices.

Gulf's public explanation for the adoption of its price discrimination programmes may be found in its submission to the Ontario Royal Commission on Petroleum Product Pricing — Gasoline Retailing. Here, Gulf provided an argument that temporary allowance and consignment programmes were indeed temporary — but only because the company did not realize how deep seated were the problems that it faced:

"...Gulf Canada realized early in the 1960's that the problem was more than short-term supply/demand imbalance. Competition for business put pressure on dealer margins and the Company felt obliged to try to support its dealers. This, then, was the beginning of competitive allowances and consignment arrangements.

"Despite the slowdown in demand . . .and the increasing competitive conditions, the nature of the problem was not at first fully understood. The granting of allowances to dealers was seen as a temporary measure to ease the dealers affected over a short-term adjustment period. Within the Company the allowances were even designated Temporary Competitive Allowances or TCA's. The problem, of course, was more deep-seated than was at first realized, and Temporary Competitive Allowances led to Consignment arrangements under which a dealer in a price-depressed

area could ask to become, temporarily, a commission agent. Under those circumstances the company actually set the retail price and paid the dealer a commission on every gallon sold. Thus, the dealer was protected to an extent, and when the price war passed he returned to the normal buy-and-sell arrangement."

(Statement by W.H. Griffen, Gulf, *Ontario Royal Commission on Petroleum Products Pricing* Toronto, 1976, *Hearings*, Volume 34, pp. 4747-8)[516]

However, Gulf's consignment programme went well beyond an innocuous response to competition. Gulf, in the late nineteen sixties, was faced with the entry of independents as the result of the majors' having pushed prices to new highs. In Gulf's words:

"... THE OPPORTUNITY FOR AGGRESSIVE RETAILERS TO MOVE INTO A VERY INEFFICIENT MARKET (LARGE NUMBER OF LOW VOLUME, NON VIABLE STATIONS) HAS RESULTED IN A SERIOUS LOSS OF SALES THROUGH BEING NON COMPETITIVE IN THE MARKETPLACE."

(Document # 69577, November 30, 1972, Gulf)[517]

While Gulf had followed Imperial and Shell with regards to subsidization of its brand, it had not done so aggressively, nor had Gulf developed second brands to the same extent as these other two majors. As a result, in late 1972, it turned to a pricing policy which was predatory in nature. It applied price reductions using consignment programmes to combat a sector — the independents — that it recognized as having lower costs than its own distribution system. These policies were meant not just to reduce the growth of this sector but were also meant to increase the independents' prices. As such they must be described as predatory in nature. Equally important, Gulf recognized that in doing so, it was adopting a course of action which while not identical to that being followed by the other majors would have the same effect. Gulf carefully evaluated the policies of the other majors knowing that the intent of these policies was to discipline the independent sector. Then, Gulf adopted the policy which they felt was best suited to their situation, but which had a similar intent. These practices by Gulf reinforced the policies adopted by the other majors and served to restrict the price competition emanating from the independent sector and, as a result, maintain the monopolistic marketing situation that had resulted in high prices charged to Canadian consumers.

4. *Texaco — Marketing Policies*

(a) *Introduction*

The previous sections have emphasized the fact that while each of the major petroleum marketers may not have adopted identical policies, they

generally had the same objective — that of maintaining high, stable marketing margins. The history of the marketing policies of the fourth largest retailer, Texaco, bears this out. Equally important, Texaco's actions illustrate why the adoption by the majors of parallel behaviour in the petroleum marketing sector should be characterized as a monopolistic situation.

The structure of the Canadian gasoline marketing sector during much of the post-war period was such that the actions of the four national brand majors — Imperial, Shell, Gulf and Texaco — had to be coordinated in order to establish and entrench a monopolistic situation. The history of the reaction of both Shell and Gulf to the entry of independents shows how these two firms integrated their actions with those of other majors. Shell studied Imperial's policies carefully and then followed Imperial. Gulf observed both Imperial and Shell; then it implemented its programmes so as not to conflict with either of these two companies. Texaco pursued a similar course of action. Already depicted as a follower in the crude production sector, as being extremely dependent for product exchanges upon the other majors in the refining sector, and as having the least aggressive crude acquisition policy in the international sector, Texaco adopted the same response of a follower in its marketing policies.

Just as important as its status as a 'follower' is the reason for Texaco's adoption of this particular role; for here there is evidence that sheds light on Texaco's perceptions of the effect that its policies would have. Texaco consciously adopted its subservient role with the intent of trying to contribute to the oligopoly's stability. Texaco understood the purpose of the course of action being pursued by the others. It acted in such a way as to adopt similar though not necessarily identical policies. In so far as Texaco acted to reinforce a strategy that it understood was common to the other majors, it may be said to have participated in the formation and protection of the unit's interests.

(b) *The Reinforcement Strategy of Texaco*

Texaco's policy throughout most of the period was aimed at reinforcing the goals of the oligopoly. This can be demonstrated by its pricing policy. Texaco patterned its reactions both with respect to general policies or more specific actions after the other majors. Its actions in this matter were quite deliberate. Texaco consciously adopted a policy of duplicating the prices of the other majors. Both Texaco's intentions and its actions demonstrate that this company knowingly followed the policies of the other majors in extracting higher prices from the retail market and in participating in the effort to restrict competition from the independent sector. In what follows, the similarity between Texaco's policies and those of the other majors is developed.

Texaco generally followed the other majors' pricing policy. For instance, Texaco's Quebec Division Manager, in 1969, characterized Texaco's "approach" in Quebec as one of "following the majors, that is primarily

Imperial Oil" (Document # 46255).[518] The Vice-President of Sales from 1961-71 testified that "in general" Texaco followed the policy of not changing its prices until two other major competitors had done so (Toronto Hearings, 1975).[519] As in other areas, the influence of Texaco's parent organization is apparent. For, a Texaco Canada memorandum in 1959 from the Manager-Pricing stated that in a meeting with a senior official from its American parent company "it was emphasized that Texaco is not a 'market-maker'" (Document # 50647).[520]

Several examples show that Texaco followed the other majors in practice. In response to a telex to Division Managers from the Assistant General Manager requesting recommendations on pricing policy, the B.C. Division Manager stated that it was his recommendation that Texaco follow Imperial's pricing actions in British Columbia:

> ". . . we recommend that our prices be adjusted in keeping with Imperial and Home as they represent approximately 35% of the B.C. market in all classes of trade."
>
> (Document # 46203, January 6, 1970, Texaco)[521]

In response to the same telex, the Western Division Manager recommended that Texaco should match the prices of Esso, Gulf and Pacific (Document # 46208);[522] the Ontario Division Manager observed that Texaco's dealer tank wagon prices were in line with those of Shell and Gulf and recommended that, east of the National Oil Policy line, "we do not adjust [DTW prices] until such time as Shell or Gulf move" (Document # 46213).[523]

Texaco's follower role was not confined to the gasoline marketing sector. An example of just how closely Texaco followed the other majors is provided by an episode in late 1971. In a letter to Texaco's president, the General Manager stated, on September 3rd, that "this week Esso had eliminated the special farm allowance on clear product and heating oils in the Western Division and in the Dawson Creek area of B.C." (Document # 55966).[524] The letter recommended that Texaco indicate that "effective 12:01 Monday, Sept. 13th, we will be withdrawing our allowance" (Document # 55966).[525] In a September 24th letter, the General Manager confirmed that Texaco followed Imperial by withdrawing the allowance but reinstituted it shortly thereafter because Imperial had changed its policy:

> "In our Western Division, Imperial reinstituted the special farm allowance of $0.01 on all farm fuels and middle distillates. You will recall in previous weeks that Imperial withdrew the one cent farm allowance, and we followed suit. . . .we advised the Western Division today to reinstitute the one cent farm allowance."
>
> (Document # 55933, September 24, 1971, Texaco)[526]

Another example of Texaco closely following Imperial is provided by a recommendation made by the General Manager in a letter of September 3rd,

1971 to the President noting that "Imperial raised their price of gasoline, diesel, stove, kerosene and turbo fuels by one cent per gallon to its dealers in B.C." and stating that "it is our recommendation that we move our prices to follow Imperial at 12:01 Monday, Sept. 6th" (Document # 55967).[527]

Texaco was strongly committed to this role as a follower. Even with the outbreak of competition due to entry by the independents in the late nineteen sixties, it continued to adopt the same role. Texaco continued to support the majors by not breaking ranks except in circumstances where it would have little effect. For example, in March 1969, the Quebec Division Manager made a formal recommendation to the Vice-President Sales that Texaco change its traditional approach of pricing with the majors and lower its price to meet the independents (Document # 46255).[528] The reason given was that the majors were no longer providing acceptable leadership:

> "... our past approach of following the majors, that is primarily Imperial Oil, appears unapplicable at this particular stage in view of the fact that in my judgement their management is unaware of what is happening in the Quebec Division market. I hesitate to say that B.A. and Shell are equally either uninformed or have a certain reluctance to face the facts. This unfortunately leaves us in a position where we have no choice but to take action first in view of the situation mentioned above."
>
> (Document # 46255, March 18, 1969, Texaco)[529]

Even in making the recommendation for a change in Texaco's pricing policy, the Division Manager noted that if the other majors changed their pricing policies and began to meet "critical situations", then Texaco should return to its traditional role as a follower:

> "It is furthermore understood that the above will only be applicable where our major competitors are reluctant to face critical situations. Should they take the original step, we would then not apply the above but merely follow our existing policy of matching Imperial Oil or a combination of B.A. and Shell."
>
> (Document # 46256, March 18, 1969, Texaco)[530]

Even though the Division manager made this recommendation for change, the pricing guidelines that were subsequently issued for Quebec did not permit the pricing freedom that was requested. Texaco generally continued to follow the other majors' pricing policies. Only in areas where Imperial, Shell or Gulf did not have major representation was the manager allowed to deviate Texaco's prices from the other majors and meet the independents. The new pricing guidelines were:

> "1) Whenever our major competitor or Shell and Gulf change pricing structure, we can immediately follow.
>
> 2) In areas where 3 above competitors do not have the major representation, the following line of action can be taken:

a) Where unbranded prices are met within .01¢ or .02¢ by Fina or other mini-refiners (B.P., Sun, Irving, etc.) we can, if deemed advisable, price .02¢ or .03¢ above jobbers pending on whether Fina, etc., are .01¢ or .02¢ above unbranded.

b) Where one of 3 other major marketers post substantial discount signs without changing pump price, we can meet same by dropping our pump price .02¢ above discount.

c) Where same as above exist, but is posted by mini refiners (no other major marketer has important distribution) the same rule to apply.

"All of the above guidelines are subject to a complete analysis of the marketing area, careful consideration by location and by surrounding area of what such moves would trigger, and naturally at all times bearing in mind that no pricing discrimination is allowable or tolerated by our Company."

(Document # 8789, June 22, 1970, Texaco)[531]

Other evidence confirms that Texaco continued this policy throughout this period with only minor modifications. As of 1972, Texaco's Quebec policy was to generally follow Imperial, Shell and Gulf except where price competition from independents existed. In the latter case, Texaco priced in relationship to Fina:

"(1) *In principle, the Division maintains retail price equivalence with our three major competitors Imperial, Shell, and Gulf; on both product grades.*

(2) Where a marketing area is disturbed by jobber or off-brand activity and retail pump prices are seven or more cents less than ours, the practice followed is to determine Petro Fina's position before establishing Texaco's pricing action. When Petro Fina matches the jobber or off-brander price for price, we react with retail prices so that we are 3¢ per gallon above Petro Fina's posting."

(Document # 8679, March 1, 1972, Texaco, emphasis added)[532]

The difference between this policy and that which was in effect in 1970 is that Texaco no longer specified that it would only meet the independents' prices where the majors had not responded and where they did not have widespread representation. But then, by 1972, this was not necessary; as described in previous sections, consignment was being implemented in Quebec by firms such as Shell in areas where Fina had decreased its prices to meet unbrandeds. And Fina had decreased its prices in areas where the independents had caused prices to deteriorate. Therefore, Texaco's policy implicitly still amounted to one of tying its actions to the other three marketers — Gulf, Imperial and Shell.

To appreciate the degree of deliberate parallelism in the majors' policies, it should be noted that Texaco patterned not only its pricing response after the other majors, but also the instruments that it used to reduce prices. It copied the other majors in adopting a two-pronged approach — using both consignment and second brands against the independent sector. Where Imperial or Shell and Gulf together adopted a subsidy programme to move branded

prices towards the level posted by the independents, Texaco followed. In areas where the majors used second brands, Texaco implemented the same policy. The "Pricing Philosophy and Authority" from the Ontario Division, dated June 14, 1971, outlined how Texaco followed the majors with each of these tools:

> "All major brand companies are reluctant to lower retail pump prices to close the gap with private brand competition. When assisting retailers major brand outlets have stayed within $0.02 of private brand retail pump prices. *Texaco's philosophy has been to wait until Imperial Oil or Shell and Gulf or any two of these competitors have assisted their retailers to establish lower retail pump prices. In specific marketing areas where there has been strong private brand competition or situations involving major oil company private brand outlets, we have established Regent locations selling at competitive retail pump prices.*"
>
> (Document # 58392-3, June 14, 1971, Texaco, emphasis added)[533]

The fact that Texaco not only adopted similar prices but also used the same instruments in the same situations — allowances, consignment and private brands — is indicative of the degree to which Texaco acted to reinforce the policies of the other majors.

Texaco's intent to contribute to the stability of the oligopoly by adopting this supportive stance is confirmed in a 1971 report from the Vice-President of Sales to the President of the company. In this report, the Vice-President explained why Texaco had not met its sales objectives in 1970. The Vice-President of Sales noted that actual gasoline sales for 1970 had shown an increase of only 4.35 per cent over 1969 as compared to the objective of 5.5 per cent. The Vice-President explained that the shortfall had occurred because Texaco had elected to contribute to market strengthening rather than to lower its prices and meet competition:

> "This will mean that we have a marginal drop in share of market after some ten years of increasing it annually. The difficulty is at retail, which is the bulk (68%) of our gasoline business. . . .
>
> "As we mentioned in our interim report after the first six months, our problem at retail stems from our inability to move volume through certain retail outlets due to the six to eight cents per gallon price cutting by some competitive retailers, particularly in Quebec and Ontario. . . .
>
> "*We could, of course, have met our volume objective had we elected to accept the lower revenue necessary to have our retailers compete at retail with these competitors, but we chose instead to endeavour to contribute to market strengthening.*"
>
> (Document # 57769, February 17, 1971, Texaco, emphasis added)[534]

This quotation also explains Texaco's desire to contribute to market strengthening. During the period of high margins and non-price competition, Texaco had fared well. However, the point to note is that the Vice-President of Sales

emphasized that Texaco consciously strove to "contribute to market strengthening" rather than to compete at retail. This indicates the strength of the self-reinforcement mechanism between the majors. In the face of new entry, Texaco chose not to compete with its brand but to try to support high prices so that widespread competition would not develop.

Other examples show how Texaco contributed to market strengthening as the majors increased branded retail/wholesale margins to the high levels of the early nineteen seventies. For instance, in September 1971, Shell withdrew dealer support in western and southern Ontario in an attempt to increase prices generally. Imperial "followed in a few areas" and Gulf "made token changes" (Document # 55956).[535] Texaco's Assistant Division Manager (Retail) examined the situation carefully and concluded that "withdrawing all price assistance would be premature and would result in a disastrous decrease in Retail Sales" (Document # 58352).[536] Even so, a memorandum to the President stated that:

> ". . . effective Friday, September 10th, we eliminated all Retailer Assistance Plan allowances in Ontario and issued cancellation notices on all Consignment Agreements with the exception of the areas east of the National Oil Policy line, plus a few minor isolated locations where Imperial and Shell had not made any change in their pricing practice."
>
> (Document # 55975, September 10, 1971, Texaco)[537]

This decision was taken in full knowledge of the possible effects if the independents did not follow. The General Manager acknowledged, after the event, that Texaco had removed allowances in spite of predicting a decrease in sales:

> "*Originally we projected a 20% decrease*, and it now appears that this will average 30%. In some cases, our stations have dropped as much as 50%."
>
> (Document # 55933-4, September 24, 1971, Texaco, emphasis added)[538]

Therefore, even though Texaco's management realized that the costs of a price increase could be high, they chose to support a price restoration.

Texaco's decision to adopt the same policies as the other firms cannot be described as the normal outcome of a competitive market. Nor could it be said that the type of parallel or similar activities that it adopted were forced upon it or that they were the only course of action available to it. Texaco's supportive activities were adopted with the full knowledge of their consequences and with the objective of reducing competition. The following episode demonstrates the way in which Texaco acted so as to reinforce attempts by the market leader — Imperial — to squeeze independents.

In early 1968, Shell initiated a gasoline price increase. Texaco's early evaluation was that in response "British American [Gulf] have commenced to move their prices upward and, in the first three zones on which we have been able to get specific information, the price increase is identical to that made by

Shell" (Document # 46280).[539] In deciding whether to follow Shell, Texaco's Vice-President stated that "it would be advisable to increase them [Texaco's prices] on the same geographic pattern and by the same amounts as Shell have done, and as B.A. [Gulf] presumably are doing" but added that "we believe we should wait until we have the complete B.A. pattern and know exactly what each company has done in each area" (Document # 46280).[540] However, he recommended some caution in that Imperial had yet to announce its policy. Imperial, in Texaco's view, had sufficient power to determine the result:

> "Our major competitor may not elect to increase prices at this time; or he may elect to change them on a different geographic pattern and by different amounts; in which case we and other competitors will undoubtedly have, ultimately, to adjust..."
>
> (Document # 46280, January 31, 1968, Texaco).[541]

Imperial's dominance was the result not only of its size but also of the policies it was using to control and to set retail prices. As the Vice-President of Texaco noted in a separate memo, Imperial could make whatever retail strategy it chose, and:

> ". . . stick wherever they wish to; particularly when they operate on consignment or salary, enough strategically located retail outlets to help force retail prices to the levels they believe are 'right'."
>
> (Document # 46276 February 14, 1968, Texaco).[542]

When Imperial announced its price increases, it "posted different tank wagon prices than B.A. and Shell" (Document # 46278).[543] Moreover, Imperial's policy involved both an increase in the tankwagon price and at the same time the granting of an allowance in some areas to dealers who 'refrained' from posting higher prices (Document # 46276).[544] Texaco's Vice-President described Imperial's actions:

> "This means in effect that Imperial Oil are 'giving back' the .008 that they have increased their tank wagon price to all dealers who refrain from posting higher than .459 in what they call 'unstable areas' and higher than .469 in what they call 'stable areas'. The only resellers who will pay Imperial .008 more per gallon will be those who disregard Imperial's stated belief as to what the 'proper' retail pricing is for that area."
>
> (Document # 46276, February 14, 1968, Texaco)[545]

The effect of this strategy was to place a squeeze on independents in those areas where it was employed by forcing up the wholesale price while holding the retail price constant. Texaco outlined the nature of the squeeze:

> "Imperial's action has made it very difficult for the private brand jobber who has been buying on a fixed discount off dealer tank wagon. In other words, they have moved the cost of the jobber's product up by .008 and forced the retail down by .01, thereby shrinking the jobber's margin by .018.

"Imperial have also changed some of the price zones which has put further pressure on the jobbers, and this is illustrated on the new price zone map."

(Document # 46279, February 7, 1968, Texaco)[546]

Fully aware of the intent of Imperial's actions, Texaco's Vice-President recommended Texaco follow Imperial as closely as possible (Document # 46275).[547] This policy was implemented on February 28, 1968 (Document # 46261).[548] The reason for adopting the same policy as Imperial was outlined by Texaco's Vice-President of Sales:

"We obviously have not lost any revenue by waiting up until now to make a move; in view of the fact that Imperial Oil is giving back its entire .008 dealer tank wagon increase to all their dealers who sell at .459 in unstable areas, or .469 in stable areas; and our investigation shows that all Imperial Oil dealers so far are falling in line. *We could leave our tank wagon where it is and save some accounting problems and extra paper work except that we then lose the 'control' factor on the retail pricing on our retailers which Imperial Oil are getting by the simple device of raising their tank wagon 80 points and then giving it back to dealers who price 'right' (in Imperial's opinion) for the area in which they market. Certainly this 'control' feature is valuable, and therefore we recommend that as quickly as possible we follow Imperial Oil's practices exactly, area by area.* Attached is a draft of a letter to the Ontario Division outlining the accounting instructions."

(Document # 46276-7, February 14, 1968, Texaco, single emphasis added)[549]

It is significant that the Vice-President admitted that Texaco did not have to follow Imperial[1] and recognized that administratively it would be less complicated if Texaco did not do so. "Control" was the key factor; Texaco recognized that this was the reason Imperial had adopted the policy and this was the reason Texaco did likewise. Texaco realized that the control this gave Imperial was being used to squeeze and to discipline the independents. Therefore Texaco's implementation of the same policy to develop control was a conscious attempt to reinforce the effect of Imperial's squeeze.

This was not the only instance of this practice being followed by the industry leader. The document that described how Imperial had combined a tankwagon increase with the implementation of a retail subsidy in Ontario noted that the same policy was being followed by Imperial in Montreal:

"This is exactly the same strategy that Imperial Oil have adopted in Montreal to force the prevalent retail price of .419 and there is little doubt that they can make this

1. Indeed Texaco went so far as to tailor its policy to follow in those instances where Imperial dealers did not accept the allowances offered by Imperial:

"We have not yet identified a case where Imperial Oil have withdrawn the allowance because their suggested pricing was not being followed by the dealer. If we can clearly establish this practice is being followed by them, we will adopt a similar practice in the same areas."

(Document # 46263, February 27, 1968, Texaco)[550]

strategy stick wherever they wish to; particularly when they operate on consignment or salary, enough strategically located retail outlets to help force retail prices to the levels they believe are 'right'."

(Document # 46276, February 14, 1968, Texaco)[551]

Other examples of Imperial's attempt to squeeze the retail margin are available. In a December 22, 1969 memo to file, the General Manager noted that Imperial increased its tankwagon price by $.007 in the three Prairie provinces, but then stated:

"Regarding Imperial Oil dealers' retail prices, it is too early to know whether or not they will move from .459 upwards by the amount of .007. N.E. Taylor advises that Imperial are endeavouring to sell their dealers on the advisability of holding the .459 price."

(Document # 46234, December 22, 1969, Texaco)[552]

During this period Texaco saw that Imperial was adopting policies that were making it 'very difficult' for the independents and Texaco emulated Imperial's actions. The data on major brand prices indicate that it was during this same period that the majors were successful in pushing their wholesale/retail margins to historical highs. Successful squeeze tactics, as this evidence indicates, required coordination both on the wholesale and retail side. The succeeding sections show in greater detail how Texaco meshed its retail policies with those of the other majors.

(c) *Texaco's Observations on the Behaviour of Other Majors*

Since Texaco followed the policies of the other majors, its observations on their actions provide a valuable description of the marketing sector. Its own perceptions of the market corroborate the view that has emerged from earlier sections: the dynamic force creating price competition came from the independent sector. But, Texaco's observations as to both intent and effect of the majors' reaction accomplish a second purpose. Texaco's observations as to the predatory or disciplinary nature of the other majors' various marketing instruments accurately reflected the motivations described in the previous sections as belonging to both Shell and Gulf. Texaco had a choice as to which policies it adopted and it chose those which reinforced the other majors — knowing that these policies were aimed at reducing competition from the independent sector. As such Texaco may be said to have participated knowingly in the creation of a monopolistic situation that was inimical to the public interest.

Texaco's role as a follower and the accompanying reinforcing effects on oligopoly behaviour could not have been accomplished without full information on the activities and intent of the other marketers. In order to coordinate its pricing policies with those of the other major companies, Texaco maintained a marketing information/intelligence system. Its documents show that price

surveys were frequently made by field personnel (Documents # 46203-19, # 46198, #46275).[553, 554, 555] Documents as to the nature of agreements between competing companies and their dealers were obtained.[1] Texaco also made special studies on competitor activity. For instance, in 1970, a study was made of Shell service stations on the island of Montreal by interviewing 136 of 144 Shell dealers (Documents # 56528-66).[559] In 1972, a study was concluded on the nature of the unbranded operations in Ottawa and the policies used by the majors to react to them (Documents # 56567-619).[560] In addition, special reporting systems allowed each operating division to describe to head office competitive developments in their area (Documents # 56056-85, # 56872-88).[561, 562]

As a result, the management of Texaco had information that permitted it to assess the state of the market. Several examples follow that indicate the type of information that was reported. On December 9, 1969, a telex was sent to the Divisions requesting information on the retail pump prices of competing majors across the country. On December 11, a response was received from Western Division listing the prices of all oil companies— both majors and unbranded independents — by city. In addition, within each city, the response listed the corresponding number of stations at specific price levels (Documents # 46220-9).[563] On January 5, 1970, a telex was sent to Division Managers indicating that Texaco would like to review the relative position of its own tankwagon prices versus each major competitor. The replies from the Division Managers were received the following day. In the case of the Western Division, the dealer tankwagon prices of the four majors for Grades 1 and 2 gasoline and diesel were provided by province and city (Documents # 46203-19).[564]

Texaco's actions provided it with the type of price information that it needed if it was going to follow the pricing policies of others. Some of this information could be acquired by simply observing the actions of other firms. Some had to be acquired through consultation with other firms. It has already been observed that if the majors were to act as a unit against the independents they had to avoid misunderstandings — any likelihood that one company, in disciplining the independents, would cause another company to retaliate against it. In Texaco's case, there is evidence to show that discussions were held with other majors and information exchanged that would have served to avoid such misunderstandings.

One way of avoiding this would have been to provide the other majors with information on the intent and use of particular subsidy schemes. While the actual nature of the exchange of information is unavailable, it is known that Texaco and Gulf discussed the way in which each used consignment. A Texaco

1. These included Commission agent agreements for Shell (Document # 56444),[556] normal lease agreements (Documents # 54619-20),[557] and consignment agreements (Documents # 56395-440).[558]

memorandum, outlining a meeting between Texaco officials and the Vice-President Sales of Gulf in April of 1972, noted that Texaco's "structure on handling private brand accounts" and the company's programme of consignment were both discussed (Document # 49721).[565] At the same time, a Gulf official passed on to Texaco officials the "opinion" that Shell was going to begin to price aggressively on a "spot basis" to improve market share (Document # 49721).[566]

Another possible area for misunderstandings involved the supply of product at the refinery level to the independent marketing sector. Throughout this period, each of the majors was concerned with the expansion of the independents and was trying to discipline the sector. However, each major was in the position that the policies that it could optimally employ were not necessarily the same. Some majors had excess refinery capacity that could not be used by other majors. This supply was provided to some non-integrated marketers but, as the volume on the refining sector has shown, the majors attempted to keep product away from price-competitive independents. To this end, occasional discussions were held between refiners to assure one another that independents were not receiving supply. In addition, discussions were held about internal company structure, in particular about who was responsible for sales to independents. Without such knowledge, coordination of strategy could not have been achieved. Discussions such as these would have served to strengthen the degree of mutual trust and understanding necessary if the majors were to act as a unit.

On October 9, 1972, an official of Texaco and the Imperial Area Manager in Ontario discussed Imperial's wholesale and retail management structure (Document # 49746).[567] On October 31, 1972, Texaco's Vice-President, Ontario, J.E. King, discussed Imperial's method of handling jobbers (Document # 49745).[568] Earlier that same year, on April 24, 1972, Mr. King had met with an official of Imperial and discussed Imperial's "S and T function" and its method of handling sales to private brand marketers (Document # 49754).[569] Because of the information that Texaco collected on other firms, it was able to describe the nature of the majors' response to competition emanating from the independent sector. Texaco's perceptions of the activity of the other majors is important for three reasons. First, it provides further information on the nature and similarity of the actions being followed by all majors. Second, it confirms that the target against which Texaco perceived these actions to be directed was the independent sector. Third, it provides the background that, along with Texaco's follower role, explains Texaco's choice of policy instruments.

Consignment, it has already been established, was used by the majors in the early nineteen seventies to threaten the unbranded sector; it also was the prime tool used to discipline this sector in the late nineteen fifties and early nineteen sixties. Texaco understood this to be the purpose of consignment in the earlier period.

Texaco's observations on the motives of the other majors is contained in a study of market conditions in the late nineteen fifties and early nineteen sixties. Texaco noted that discounters at this time had begun to grow quite rapidly and "had caused serious problems in maintaining prices at a level adequate for a major oil company lessee to earn an adequate return" (Document # 57440).[570] The resulting price wars had caused "corporate earnings" to be "seriously reduced" (Document # 57440).[571] Corporate profitability suffered when the majors met the independents' prices because the majors' branded network had been over expanded. The oligopoly had relied upon non-price competition rather than price competition and had increased average costs to the level of the high retailing margins that the majors had set. When independents entered — being supplied from offshore or domestic production from local refiners — the branded network was seriously threatened.

A Texaco document noted that the majors' response to this competition was to move prices downwards in order to 'discipline' the independents:

> "*Remedial Policy, Mechanics of Pricing*
>
> The most recent remedial policy vis-a-vis the mechanics of pricing undertaken by the leading companies in the petroleum industry has been the move to meet the price of unbranded jobbers. *The method of achieving price stability appears to be that of 'discipling' unbranded jobbers to maintain retail prices at a level which will yield a reasonable return at the service station level.*"
>
> (Document # 57439, November 22, 1962, Texaco, emphasis added)[572]

This statement indicates that the intent of the majors was not to adopt a new more efficient marketing scheme with lower prices but to protect their existing network and to re-establish the higher prices that this network needed in order to survive. That it was the intention of the majors to force prices upwards is emphasized by the following statement taken from the same study:

> "This move to lower prices by the majors, which was initiated by a principal company in the large markets of Toronto and Montreal in September and October of this year, is causing serious revenue problems for all major oil companies in these markets.
>
> "The stand taken by this principal company appears to be a move towards lower prices in order *to force unbranded jobbers to raise their prices to equal that of branded outlets*. Under these circumstances, competition would be on the basis of location, service, brand name, etc., with the result that unbranded jobbers would not be able to continue to cut into branded sales to the extent that they did when the jobber was competing on the basis of price only."
>
> (Document # 57439, November 22, 1962, Texaco, emphasis added)[573]

Consignment was the 'practice' used by the majors to reduce prices temporarily and to discipline the independent discounters:

> "In most major cities today, the practice is for the majority of the major marketing companies to sell gasoline to their dealers on a consignment basis."
>
> (Document # 57439, November 22, 1962, Texaco)[574]

With these observations, Texaco confirmed that in the face of entry during the late nineteen fifties and early nineteen sixties, the majors used consignment programmes to decrease their prices so as to discipline the independents. The goal of these practices was to force the independents' prices upwards to levels that would not significantly affect the branded sector of the market.

While this policy served to reduce the growth of independent marketers in the early nineteen sixties, by the early nineteen seventies, the independent sector once again provoked disciplinary reaction from the majors. The independents began to expand in response to high branded retail margins. As before, the majors were faced with having to respond to the independent sector.

That it was this sector and not internal rivalry among the majors that caused Texaco 'concern' is confirmed by numerous quotations taken from documents written during this period. For instance, in a November 19, 1969 memorandum, the Vice-President of Sales noted that private brand resellers "have doubled their share of the Ontario market in the past two years. This is necessarily a great concern to major oil companies" (Document # 46243).[575] Thus, Texaco realized that the threat of the independents was not confined to them, but also to the other 'major oil companies'. Two years later, in a June 14, 1971 report from Texaco's Ontario Division, the problem with independent marketers was reiterated:

> "Private brand competition has increased in number of outlets and in percentage of the retail gasoline volume sold in Ontario. Our most recent market survey made in March 1971 showed that private brand had 18.2% of the retail gasoline volume in major cities. This is an increase of 4.2% over 1969. In each District we find the number of private brand outlets increasing and, for example, in Ottawa it is estimated that by 1972, one out of every three retail gallons will be sold through private brand. Pump prices at private brand outlets range from \$0.07 to \$0.12 below major brand retail pump prices."
>
> (Document # 58389, June 14, 1971, Texaco)[576]

By April 1972, the majors' branded price structure came under "severe pressure". The Assistant General Manager (Retail) of Texaco once more confirmed that the threat continued to come from the independent sector:

> "Present marketing problems arise from the growth of unbranded marketers supplied by both major and minor refiners of petroleum products.
>
> . . .
>
> "As a result the major full price branded service station is under severe pressure and is steadily losing market position. We foresee a definite deterioration in the viability and operation of these outlets unless their competitive abilities can be restored."
>
> (Document # 8786-7, April 7, 1972, Texaco)[577]

Further evidence that Texaco responded primarily to competition coming from the independent sector can be found in policy recommendations made by its staff. The Assistant General Manager (Retail) recommended that in adopting a price policy Texaco should "recognize that the unbranded marketer is our major threat" (Document # 8787).[578] However, in doing so, Texaco took care to adopt similar policies to those being used by other majors. During this time, the majors developed a two-pronged strategy to generate and to support a large price spread between their brands and the independents. On the one hand, the capital intensive method of car washes was used to protect the high branded prices. On the other, an aggressive programme of debranded stations was employed directly against independents. A Texaco document summarized the events that occurred as the majors' retail/ wholesale margins moved to high levels in the early nineteen seventies:

> "1. Tremendous increase in the nos. of unbranded outlets brought about by a surplus of gaso. discounted at from .08 to .10 below D.T.W.
>
> With a Dealer margin of between .08 and .11, it gave the unbranded outlet a total margin of approx. .17 or .18 [sic] cents to work with — so he discounted anywhere from .07 to .13 [sic] cents off retail.
>
> "2. Major Cos. such as Shell, Esso & Gulf to a lessor [sic] degree started a massive program building Tunnel type Car washes where they offered a free C/W with a fill up.
>
> This amounted to a perceived value or discount off a gal. of gaso. of .15¢ [sic].
>
> "3. Then the most prosperous Jobbers also go on the c/wash bandwagon and discounted car washes off an already discounted gasoline price.
>
> B.P. — Supertest, Sunoco, Irving all got into the act.
>
> "4. Then the majors such as Shell, Esso Sun, B.P. Gulf and Texaco saw that the gaso. buyer was leaving the traditional Branded station at full retail price and was going to a station selling at a discounted price, thus establishing a two-tier price system and so they— debranded a selected no. of their branded stations."
>
> (Document # 45779-80, Undated, Texaco)[579]

While Texaco recognized that the independents offered the chief source of competition, at the same time, neither of the market leaders, as Texaco saw them, were willing to compete with the brand:

> "It would appear that Imperial do not intend to compete in price at branded outlets. . . ."
>
> (Document # 58391, June 14, 1971, Texaco)[580]

> "Imperial and Shell have apparently adopted the following marketing strategy:
>
> (1) Maintaining a high posted dealer tank wagon price for branded locations, and thereby allowing a retail price differential of up to $0.13 per gallon over competing unbranded locations."
>
> (Document # 8786, April 7, 1972, Texaco)[581]

Texaco's description of the situation shows that in the face of this competition from independents the major marketers as a group — but led by Imperial and Shell — were 'reluctant' to adopt the lower prices that the independents had shown were feasible. The majors kept branded prices high and chose selective tools such as second brands to counter the independents:

"Essentially, in all areas, the following appears to be the present pattern:

"1. Unbranded jobbers and private brand retailers selling at prices lower than branded, major marketer retailers are capturing an increasing share of the market.

"2. Major brands, notably SHELL and IMPERIAL are apparently reluctant to meet this price competition on a direct branded basis, and have chosen to retain their share of the market by:-

(a) Establishing their own private brand outlets.

(b) Rapidly expanding car wash and self-serve facilities, both of which have the effect of perceivably reducing the retail price of gasoline."

(Document # 58384, June 28, 1972, Texaco)[582]

In addition to second brands and car washes, the majors chose to react to the independents by implementing a subsidy for their branded dealers — at first on a highly selective basis and then more broadly. Texaco observed:

"The traditional Branded station requested assistance stating his viability was hurting and so majors moved to assist, subsidizing a discount.

"The jobbers moved lower . . . .

"The majors put more and more dealers on subsidy."

(Document # 45781, Undated, Texaco)[583]

In late 1971, the majors revoked all subsidies and reverted to a high price for the brand. At the same time a rapid debranding programme was begun, according to Texaco, because it was a more selective method of cutting price to meet the independent:

"It was at this time that many Branded s/s were debranded because the Major Co. could debrand and lower the price whereas it could not afford to lower the price of all the branded outlets in the market area.

"If a Major tried to lower one or two Branded s/s to meet the jobber, it had to lower all stations or at least offer the subsidized price to all of them or be liable to discrimination."

(Document # 45782, Undated, Texaco)[584]

As a result, by 1972, the majors had become both more selective in their use of support payments and more aggressive in establishing second brands. The following excerpt from a 1972 memorandum written by the

General Manager to the President of Texaco stressed Imperial's and Shell's debrand activities:

> "Regarding the retail price situation across Canada, we should report a continuing depression in retail pricing. *In certain markets*, the majors have been forced to offer retailer allowances in order that their retailers can come down to within \$0.03 and \$0.04 of unbranded prices. There remain many markets across Canada where the majors' share of market is decreasing at a rapid rate, with an ever increasing number of unbranded jobbers opening and securing a sizeable share of the market.
>
> "Imperial are building and opening 'Econo' type outlets at an accelerating rate. Shell are continuing to debrand their branded outlets, opening them under various trade names, the major one being their wholly owned 'Beaver' subsidiary.
>
> "Shell and Esso, and to a lesser degree Gulf and BP, are continuing to build and open car wash facilities."
>
> (Document # 53618, August 15, 1972, Texaco, emphasis added)[585]

Similarly, in an earlier memorandum to the President dated April 25, 1972 concerning competitors' activities in retail pricing, the General Manager also stressed the debrand programme that Shell was following:

> "The retail price market is very soft. *Majors are losing share of market to unbrandeds who are expanding rapidly. Shell* has stepped up their programme to convert branded outlets to unbranded. Their 'GasMart' locations in Ontario are being re-identified 'Beaver' which is a wholly owned subsidiary."
>
> (Document # 50278, April 25, 1972, Texaco, emphasis added)[586]

Texaco, therefore, was faced with a situation similar to that in which Gulf found itself. As a follower, Texaco had previously adopted policies that supported those chosen by Imperial and Shell. However, in the earlier period, the industry had implemented relatively straight forward subsidy programmes to discipline the independents — by bringing branded prices down in select areas. In the early nineteen seventies, the strategy adopted by Imperial and Shell became more complex. First, they used heavy capital expenditures on the brand. Second, they expanded second brand programmes. Third, the traditional subsidy programme was made more selective. Texaco, like Gulf, reinforced the policies being implemented by the 'leaders' by concentrating primarily on a subsidy programme.

(d) *Texaco's Allowance Programmes*

Allowance programmes — referred to by Texaco as a Dealer Assistance Plan (DAP) or Retailer Assistance Plan (RAP)—were used extensively by Texaco in the period 1968-1972 except in Quebec where consignment was used almost exclusively from the early nineteen sixties. In both regions, the assistance programmes were aimed at the independents. This is emphasized in the follow-

ing document. It compares the strategy that Texaco used against independents in Quebec as opposed to that used in Ontario:

"After considerable investigation and discussion, including the meeting held by Ontario and Quebec Division and Executive Office personnel on March 2nd, the writer is convinced that generally speaking the tactics employed by Quebec Division constitute a more effective defensive pricing policy than the pricing reactions used by Ontario Division. Quebec Division has had practically all of its 1,250 Retailers on some form of price assistance for some time and apparently has been able to maintain share of market, profitability, and Dealer viability in the face of extreme market pressures. A brief summary of Quebec and Ontario price philosophy is as follows:

"(A) *QUEBEC DIVISION*

(1) Assistance to Texaco Retailers to support a retail price of \$0.03 higher than Fina Retailers. Inasmuch as Fina pricing policy is to match unbranded outlets, and they have retail representation wherever we do, it follows that we are essentially supporting Texaco retail prices at \$0.03 higher than unbranded generally.

(2) A pricing schedule designed to give maximum assistance to Texaco Retailers.

(3) Discouragement of price signs at Retailer locations.

. . .

"*In considering the effectiveness of the above, and recognizing that unbrandeds are the competitive factor to defend against*, the writer recommends the following as our pricing policy and philosophy for Texaco Retailers:

(a) That we assist Texaco Retailers to permit a retail price of \$0.03 above unbrandeds.

(b) Design a pricing schedule which will ensure that Retailers can continue to pay normal rentals, participate in Starburst and other promotional programs, and generally afford to operate on desired standards. A price policy allowing a \$0.03 differential as opposed to a \$0.02 differential will help in this regard.

(c) Discourage price signs at Retailer locations."

(Document # 56741, March 17, 1972, Texaco, emphasis added)[587]

This document indicates that it was the unbranded sector that provided the dynamic force behind price competition and that it was at this sector that Texaco aimed its policies. Nevertheless, Texaco, in implementing its subsidy programmes, did not act independently of the other majors. Texaco, as has already been demonstrated, followed Shell's and Imperial's pricing policy. This involved not only adopting their normal branded prices but also responding similarly to the manner in which they met outbreaks of competition with temporary allowances. This policy continued to be followed even as unbrandeds were expanding in the early nineteen seventies. In April 1972, the Assistant

General Manager Retail noted that Texaco continued to match the majors in granting assistance during this period:

> "Our present policy provides for assisting our Retailers to meet the posted retail price of major brand competition only.
>
> "Present marketing problems arise from the growth of unbranded marketers supplied by both major and minor refiners of petroleum products."
>
> (Document # 8786, April 7, 1972, Texaco)[588]

But, unbrandeds had become enough of a problem that this official recommended that Texaco's assistance policy be changed so that instead of always being a 'follower', Texaco managers would be permitted to meet unbranded competition directly. The recommendation was to:

> "Recognize that the unbranded marketer is our major threat, and assist our branded Retailers to enable them to post a retail gasoline price $0.03 higher than their immediate unbranded competition."
>
> (Document # 8787, April 7, 1972, Texaco)[589]

The difficulty that faced Texaco in choosing a policy and the reason it considered straying from its 'follower' role stemmed from the strategy being followed by the two market leaders. In the same memorandum the Assistant General Manager Retail noted that Imperial and Shell had adopted a strategy that tended to emphasize second brands rather than consignment type subsidy arrangements. Their strategy in Texaco's words, amounted to:

> "(1.) Maintaining a high posted dealer tank wagon price for branded locations, and thereby allowing a retail price differential of up to $0.13 per gallon over competing unbranded locations.
>
> (2.) Conversion of selected branded locations to unbranded in an effort to obtain a share of the retail price discounted gasoline market.
>
> (3.) Construction of car wash facilities which permits giving a customer a perceived value of up to $0.15 per gallon by offering free car washes with gasoline purchases.
>
> (4.) Conversion to branded self-serve facilities, often coupled with a car wash, and posting a retail price of approximately $0.03 per gallon below other major brand marketers."
>
> (Document # 8786, April 7, 1972, Texaco)[590]

As noted, the majors did not, at first, collapse their high branded price structure to meet competition from the independents. When they used a subsidy programme, they were highly selective. As a follower, Texaco too adopted this type of price support but it did not employ the other weapons used by the leaders. It would, therefore, have been at a disadvantage in certain areas. It was Texaco's policy at this time to match the price structure of the other majors except in areas where these firms did not have "major representation" (Docu-

ment # 8789).[591] Here Texaco came down to within 2 to 3 cents of independents. With Imperial and Shell not granting widespread price support, in some areas where these companies had representation Texaco's 'follower' policy would have left it without a strategy to counter the independents. In September 1971, Texaco admitted to the general problem that it faced with independents:

> "The most important point for consideration is that we must acknowledge that our major competition is now the private brand outlets and the many stations offering a free car wash with fill-up. . . .
>
> "It should also be noted that price assistance now being extended to retailers was not implemented primarily to meet the prices of Shell and Esso. Many of our recommendations were made and approved based on the necessity of being competitive with Private Brand locations and other majors such as Fina, B.P., and Supertest that were selling at reduced pump prices."
>
> (Document # 58352, September 2, 1971, Texaco)[592]

Because of the continued growth of the unbrandeds, Texaco eventually revised this assistance programme. By mid-1972, Texaco's policy was no longer to restrict the initiation of temporary assistance to areas where the other majors were not represented. A memo from the Assistant General Manager (Retail) dated June 28, 1972 entitled "Price Policy and Philosophy" omitted any reference to restrictions on allowances:

> "Our present pricing policy recognizes the need to remain competitive with other major brand marketers and allows for assistance to our Retailers in this regard, where necessary. Where present marketing conditions across Canada threaten our share of the market and retailer viability, we have been taking defensive action."
>
> (Document # 58384, June 28, 1972, Texaco)[593]

The defensive action described above was further outlined:

> "Where it has become obvious that our share of the market or Retailer viability is being adversely affected, we have been approving Retailer Assistance, using the following as basic guidelines:-
>
> (a) To enable Retailers to meet major brand competition or post a retail price allowing a differential of $0.03 above the going unbranded retail price.
>
> . . .
>
> (d) Retailers in Quebec have not used price signs as they feel that advertising the differential works in favour of the unbrandeds, and helps spread market instability."
>
> (Document # 58385, June 28, 1972, Texaco)[594]

This was the policy that Texaco officials had recommended in order to deal with the "growth of unbranded marketers" (Documents # 8786-7)[595] in recognition that "unbrandeds are the competitive factor to defend against" (Document # 56742).[596]

Therefore the new approach Texaco adopted in the application of its subsidy programme to fight the unbranded sector was more aggressive. As has already been demonstrated, this change in emphasis was also implemented by the other majors at this time. In an August 15, 1972 letter from the General Manager to the President, the use by the majors of retail assistance to fight the unbrandeds was described:

> "Regarding the retail price situation across Canada, we should report a continuing depression in retail pricing. In certain markets, the majors have been forced to offer retailer allowances in order that their retailers can come down to within $0.03 and $0.04 of unbranded prices."
>
> (Document # 53618, August 15, 1972, Texaco)[597]

At the same time that Texaco was extending the use of temporary allowances it was also making the use of this instrument more selective. Allowances were a means of selective price reduction in that they obviated the need to reduce tankwagon prices in general. Texaco's Assistant General Manager (Retail) noted that this was the justification for not lowering the tankwagon price across the normal marketing area — a "price zone":

> "Q. When you have these allowances, why would you do that rather than, say, lower the tankwagon price?
>
> A. Well, again, if we lowered the tankwagon price, we would have to lower the tankwagon price in all of a marketing area and, again, I think, when I say 'marketing area', I am talking about a price zone area that was described yesterday, rather than a marketing area as I have talked about in relation to an individual retailer."
>
> (Testimony of Mr. R. Krantz, Assistant General Manager of Retail, Texaco, Toronto Hearings, 1975, Vol. VII, p. 756)[598]

However, the degree of price discrimination resulting from the use of allowances depended upon the selectivity used in their application. Texaco, like Gulf and Shell, not only used allowances more aggressively at this time to bring its branded prices down to the level of the independents, but it also narrowed its definition of the area to which allowances were offered. In doing so, Texaco, like the other majors, reduced the cost of 'disciplining' the independents by reducing the area over which it granted subsidies. This action also reduced the likelihood of retaliation by other majors. Thus, it lessened the chances that the area of price competition would spread. These factors were considered by Texaco's management. In a June 28, 1972 paper, the Assistant General Manager Retail noted that one particular problem with the proposed policy of an extension of the use of temporary allowances was "the possibility that the introduction of Assistance will serve to spread the market condition" (Document # 58385).[599]

The following excerpt from Texaco's Manual of Procedures issued in 1962 entitled "Dealer Assistance Plan" outlined the manner in which a request

for subsidy was to be handled. It makes it evident that Texaco initially tended to grant assistance to a broad geographical area:

> "When the Dealer Assistance Plan must be extended to one or several dealers at any given time, *that is several dealers within the same bulk station area*, or an area comprising several bulk stations, the District Manager, after receiving authorization of the Division Manager or Assistant Division Manager (Sales-Merchandising), will immediately prepare Form S-398 (Revised) detailing the individual accounts and the posted retail (pump) price for these accounts within the area.
>
> . . .
>
> "After approval is given by this office to extend assistance to a particular dealer or to several in a particular locality, *the assistance must be extended to all dealers in the same locality*."
>
> (Documents # 56627-8, February 15, 1962, Texaco, emphasis added)[600]

The need to treat all competing dealers similarly was stressed in a subsequent version of the manual:

> "It is essential that once assistance has been granted to a dealer requesting it, such assistance be extended to all other Texaco dealers in the competitive area and it is desirable that these other dealers also make written requests for assistance."
>
> (Document # 56635, Undated, Texaco)[601]

The "competitive area" over which all dealers were offered the same subsidy was defined as "the area in which are located the non-Texaco dealer or dealers and any Texaco dealer or dealers who are competing with the dealer requesting assistance" (Document # 56634).[602]

A change in this policy occurred in early 1971; at this time, new provisions were drafted to allow the specification of "zones" within which temporary allowances were to be granted. The concept of a 'zone' appears to have been more restrictive than the market or competitive area which had previously been used. The instructions are quoted at length below:

"4. *METHOD OF HANDLING RETAILER ALLOWANCES — METROPOLITAN AREAS*

A. *General Principles*

> Areas of heavy population density present special problems which require careful handling of Retailer allowances. Sub-markets or zones possessing unique competitive characteristics usually exist within such areas. Experience has demonstrated that an allowance change made in response to retail price conditions generally cannot be applied uniformly throughout the entire metropolitan area in an identical amount since such action would fit competitive conditions in only one or a few sub-markets, while creating additional difficulties for the Company and its Retailers alike, by either depressing previously unaffected areas, or providing inadequate response in

affected areas. Therefore, in deciding upon Retailer allowances in response to retail price conditions in metropolitan areas, those delegated the authorities shall be guided by the following principles:

(a) Competitive retail price conditions usually do not affect all individual sub-markets within a metropolitan area. Those involved are affected in different ways, and at different times, and to a different extent.

(b) *All Retailer allowance changes in response to competitive retail price conditions in metropolitan areas must, therefore, be made on a sub-market basis, or zone, rather than on an area-wide basis.*

(c) In making Retailer allowance changes in response to competitive retail price conditions, it is our purpose to: (l) Extend price assistance to every sub-market affected by such condition which contains one or more Texaco Retailer, (2) To make our allowance changes in each sub-market responsive to the competitive effect therein, (3) To avoid the occurrence of competitive injury to any Texaco Retailer and, (4) To avoid extending any price condition to any area which is unaffected by such competitive retail price condition.

"B. *Establishment of Zones*

(a) In most metropolitan areas we have mapped and defined sub-markets or zones which accurately reflect the economic and competitive realities of retail gasoline marketing affecting our existing Texaco retail markets. As expeditiously as possible, we will complete this zoning in all remaining metropolitan areas. *Each zone must* include within it all Texaco retail outlets which experience has shown to be directly affected by the same local competitive conditions at approximately the same time and to substantially the same extent. Such zones should, to the extent possible, reflect the true nature and impact of retail gasoline price competition faced by Texaco outlets, and, therefore, no zone should be artificially extended to include a Texaco outlet faced with a competitive situation which significantly differs from that faced by the other Texaco outlets within such zone.

. . .

"5. *METHOD OF HANDLING RETAILER ALLOWANCES — NON-METROPOLITAN AREAS*

(a) While we prefer that zone pricing be practiced only in large population centers, we recognize that occasionally there are cities [handwritten 'situations'] in which the Company's interests can best be served by zoning towns [handwritten 'areas'] with somewhat less population than in metropolitan areas. Under the circumstances, we will consider recommendations for this type of zoning with the understanding that:

(i) Zone pricing will not be engaged in until approval has been received from the office of the Assistant General Manager (Retail).

(ii) Each recommendation will be fully supported by maps and data sheets, prepared in accordance with the instructions for metropolitan areas.

(iii) Each recommendation must be accompanied by a complete explanation for the need of zones for the town or area involved.

(iv) Pricing will be administered with the same care as in metropolitan areas to the end that all Texaco Retailers will receive equal treatment under the same circumstances.

[handwritten in margin — 'why limit this possibility to non-Metro areas?']

(v) If there are Texaco Retailers located outside of a particular non-metropolitan area in which a price change is made effective, which are directly or indirectly affected, although to a lesser extent and/or at a delayed time by either the depressed price condition necessitating our price change or by our price change itself, or by both, *it may be necessary* to reduce our prices to all such Retailers at the time such effect occurs in an amount which is proportional to the effect upon them. Such price changes may be necessary in outlying neighbourhoods, suburbs, nearby towns, or along a heavily travelled highway for some distance in order to offset any substantial competitive disadvantage occurring to Texaco Retailers in such areas, regardless of the fact that competitive price conditions in such areas do not reflect the necessity for such reduction."

(Document # 5376l-6, January 5, 1971, Texaco, emphasis added)[603]

Under the new policy a zone was to be defined as 'competitive conditions'—not as a 'competitive area' covering 'all dealers in the same locality' as was previously used. 'Competitive conditions' given Texaco's admission that independents were the chief threat, can be interpreted as referring to the existence of independents. That this was a change in policy is also suggested by the fact that Texaco's law department expressed concern "with respect to the establishment of marketing zones" (Document # 53756).[604]

This change in the concept of the area over which Texaco would grant an allowance permitted a finer degree of price discrimination. For instance, Texaco could now grant a different allowance to a dealer who was located in close proximity to an unbranded as compared to another Texaco dealer located at some distance even though the two Texaco dealers competed one with another. The new instructions stressed this by stipulating that changes had to be made on a "sub-market" or "zone" basis rather than on an area-wide basis. Discussion in the section on Shell's policies has already described the impossibility of dividing up price zones into mutually exclusive non-competing areas. Therefore Texaco was simply discriminating between dealers on the basis of the *degree* of competition from unbranded independents. The objective was to "avoid extending any price condition to any area which is unaffected by such competitive retail price condition" (Document # 53762).[605] Preventing the spread of price competition, it has already been shown, was also Shell's objective in designing its allowance programme.

In conclusion, Texaco — like Gulf and Shell — reacted to the entry of independents by refining the degree of price discrimination that it practised. Where temporary allowances were used, a policy was adopted that focused on the price of the unbrandeds. At the same time, the geographic areas eligible for these subsidies were more narrowly defined. This permitted an aggressive disciplinary policy against independents to be implemented at lower cost to the company.

That this instrument was used as a temporary tool, in a selective fashion, against unbranded gasoline retailers which were lower cost distributors is indicative of disciplinary or predatory intent. In addition, there is more direct evidence of this objective. Information has been presented to show that Texaco in 1968 followed Imperial in implementing temporary allowances designed to 'squeeze' the independents. When the Vice-President, Sales, was questioned at hearings on the 1968 episode, his explanation of what happened confirmed Texaco's understanding of the effect that Texaco's strategy had on the independents. In addition, his explanation suggested this strategy was not uncommon. The Vice-President, Sales, in answer to a question as to the effect implementation of allowances along with a tankwagon increase would have, answered:

> "If an unbranded jobber is buying at a discount off tankwagon and the tankwagon price goes up, so does his buying price go up, but if the retail price by the Imperial retailers is held at 45.9, he is shrunk, *so that is just one of the facts of life in the oil business*."
>
> (Testimony, Mr. J.C. Wattie, Vice-President, Sales, and General Manager, Texaco, Toronto Hearings, 1975, Vol. VII, p. 820, emphasis added)[606]

(e) *Texaco's Consignment Programmes*

In Quebec, consignment was the most prevalent form of subsidy programme used by Texaco.[1] As with temporary allowances in Ontario, the consignment system used in Quebec was intended to meet unbranded price competition (Document # 56741).[608] This was also the use to which consignment was put in those few areas in Ontario where it was employed. In a 1969 memorandum describing the use of consignment in Ontario, the Vice-President of Sales stated:

> "Regarding the few accounts we have on consignment — about 70 in the whole Division — the only reason we have these on consignment is they are in a really depressed market area, and our strong recommendation is to leave these particular accounts as they are. Most of them are selling well below the top of the price schedule

1. In November 1969, of the 308 retailers being subsidized in Ontario, 76 were on Texaco's RAP (Retail Assistance Programme), 162 on special allowances and 70 were on consignment (Document # 46240).[607]

on their consignment agreement and are getting correspondigly [sic] lower margins. *Any required move up by us at retail would simply work against our marketing strategy to contend with certain private branders in their immediate area.*"

(Document # 46244, November 19, 1969, Texaco, emphasis added)[609]

While temporary allowances were generally relied upon by Texaco in Ontario, by the end of 1972, they were being replaced by the practice of consignment in this province. By December, the Ontario Assistant Division Manager reported that Texaco was proceeding to "convert *all* retailers presently being assisted under the Retailer Assistance Plan to our Consignment Plan" (Document # 50256, emphasis added).[610]

The reasons for Texaco's conversion from temporary allowances to consignment were the same as those used by both Gulf and Shell. The attack on the unbrandeds using temporary allowances was threatening to spread the areas of price competition. In addition, it was a relatively costly tool for price discrimination — even when it was used selectively it tended to be granted to a wider area than consignment so as to reduce the chances of a violation of the price discrimination section of the Combines Investigation Act. In a June 28, 1972 paper by the Assistant General Manager (Retail) entitled "Price Policy and Philosophy", concern about the costliness of the allowance programme was outlined. In referring to Texaco's allowance programme he wrote:

"Implications which concern us are:-

1. That Assistance is offered to all Retailers in a competitive area to meet legal requirements.
2. *The possibility that the introduction of Assistance will serve to spread the market condition.*
3. High cost Cross Leases will place us in a loss position at some outlets.
4. Company profitability."

(Document # 58385-6, June 28, 1972, Texaco, emphasis added)[611]

The author of this passage has testified that he was referring here to the tendency of temporary allowances to spread "lower prices" and elaborated upon the reasons:

"A. . . . in order for us to meet the requirements for offering assistance to all of our retailers in a given area, we may be confronted with a necessity to extend assistance into areas where it is not required, or was not required.

"In other words, there was a cost factor of rendering assistance beyond those areas that actually needed it."

(Testimony of Mr. R. Krantz, Assistant General Manager of Retail, Texaco, Toronto Hearings, 1975, Vol. VII, pp. 747-8)[612]

Consignment, in the eyes of the oil companies, did not suffer from the defects connected with the use of temporary allowances since it permitted direct company control of pump prices. The 'control' aspects that made consignment attractive are outlined in the following Texaco document:

> "With the current development of Non-conventional Gasoline Retail facilities, such as, Car Washes, Self-Service Gas Bars, etc., it appears that a different form of pricing is required.
>
> "The Conventional Service Station derives revenue from many different sources and normally functions well on normal Retailer pricing and margins. The Non-conventional Outlet normally relies heavily on gasoline revenues for viability, and depending on volume, overhead, etc. economic requirements may not be accommodated within normal Retailer pricing and margins.
>
> "In these circumstances, our Consignment Plan can be considered as it offers the following:
>
> 1. The Company owns the product until it is sold to the motorist; and, therefore, we can establish the retail price.
> 2. We can establish a Retailer Commission, which may be higher or lower than the prevailing retailer margin.
>
> . . ."

(Document # 50261, April 19, 1972, Texaco)[613]

Also, illustrative of the 'control' aspects of consignment is the following excerpt. In it Texaco discusses the need to establish a wide enough range of retail prices for the consignment schedule so that in a volatile market, it would still have control over retail pricing:

> "*COMMISSION SCHEDULES*
>
> There has been action in certain areas such as Windsor to increase retail pump prices so that retailers would make their full margin without the support of the Company. However, it is possible and often happens that the *price increase is only temporary and it is necessary to revert back to consignment*. Our only method under existing schedules is to take the retailers off consignment when the pump prices exceed the maximum and place them back on consignment when the prices lower requiring support. As you can realize there is a great amount of time lost in preparing consignment agreements, dips, etc. To reduce our costs, we recommend *we revise our commission schedules to include higher authorized selling prices* and attach as appendix 1 and 2 illustrations of the revised schedules. Upon approval we will revise all schedules providing you with a copy of the applicable schedules for each price zone in the Division."

(Document # 50287, March 22, 1973, Texaco, emphasis added)[614]

Finally the following Texaco statement also indicates that Texaco like the other majors turned to the use of consignment at this time to control prices:

> "Consignment is being used by ourselves and our competitors for the following purposes:

1. To enable control of retail price, especially where otherwise there may be a risk of price discrimination."

(Document # 45805, October 2, 1972, Texaco)[615]

The same document also noted that consignment could be used to control retail prices where price competition had developed:

"We can consider Consignment for the following:

(a) *Soft markets where we are experiencing difficulty with the retail pricing structure, and particularly where there is a possibility of price discrimination.*

(b) As an alternative to R.F.A.P.

(c) Where it may produce additional company revenue.

(d) Locations where we wish to exercise control over pricing and other aspects of the operation.

(e) Locations with unpredictable profitability or where we may be experimenting, i.e. self serve, convenience stores, car wash combinations, etc. and for the purpose noted in item 2 above.

De-branded locations must be on Consignment."

(Document # 45805, October 2, 1972, Texaco, emphasis added)[616]

That consignment was indeed used where retail price competition had broken out is noted in the following excerpt from a Texaco document:

"As you are aware, certain of our Districts are experiencing severe retail price competition and it is our recommendation that we revert to our Consignment Plan in an attempt to exercise better Company control."

(Document # 50259, September 27, 1972, Texaco)[617]

This use of consignment — for control in areas where severe price competition was taking place — was confirmed by testimony of the Vice-President Sales (1961-71). Texaco, he stressed, used consignment rather than temporary allowances when the market was particularly volatile:

". . . generally speaking if the retailers had a problem in a wide area and price movement was very volatile, it would be the judgement of all of us that consignment would be the better plan because you can make changes faster because you are setting a price on your product."

(Testimony of Mr. J.E. King, Vice-President Public Relations, Texaco, Toronto Hearings, 1975, Vol. VI, pp. 667-8)[618]

The intent then behind the use of consignment was to permit direct company control when competition became particularly severe since in these circumstances the use of temporary allowances suffered from the problem that it became too costly and it threatened to spread rather than contain price competition. This was the situation that had developed by late 1972. Therefore

Texaco shifted from temporary allowances to consignment in those areas where allowances had been used to combat the unbrandeds.

Since the advantage of consignment over temporary allowances lay in its more selective application, Texaco pursued this policy. In November 1969, the Vice-President of Sales indicated that Texaco was using consignment against independents:

> "Regarding the few accounts we have on consignment — about 70 in the whole Division — the only reason we have these on consignment is they are in a really depressed market area, and our strong recommendation is to leave these particular accounts as they are. Most of them are selling well below the top of the price schedule on their consignment agreement, and are getting correspondigly [sic] lower margins. *Any required move up by us at retail would simply work against our marketing strategy to contend with certain private branders in their immediate area.*"
>
> (Document # 46244, November 19, 1969, Texaco, emphasis added)[619]

Consignment was to be used against independents in 'select' areas as the Assistant Division Manager (Ontario) noted in a letter to the Assistant General Manager Retail dated March 6, 1973:

> "A study has been carried out in Toronto as a result of the growing de-brand competition of our competitors especially Imperial Oil and Shell, and Gulf's recent aggressive attitude toward meeting competitive situations in the market place.
>
> "We recommend for approval that we assist our Retailers in *selected marketing* areas to be competitive at $0.03 above the posted pump price of private brand or de-brand locations or meet branded competition such as Gulf in the particular area."
>
> (Document # 50288, March 6, 1973, Texaco, emphasis added)[620]

Thus, consignment was implemented so as to circumvent both the pre-1976 resale price maintenance provisions and the price discrimination clauses of the Combines Investigation Act. Consignment was required because Texaco intended to price discriminate on a selective basis amongst dealers so as to focus its efforts on unbrandeds.

Evidence has already been adduced that Texaco officials appreciated that consignment in the early nineteen sixties was used to lower prices in order to "discipline" independents and "to force unbranded jobbers to raise their prices to equal that of branded outlets" (Document # 57439).[621] The implementation of consignment by Texaco in the early nineteen seventies was accompanied by similar motives. Texaco used consignment on a temporary basis to hinder the growth of the independent marketers. It was Texaco's intent to use consignment to facilitate a price restoration.

This is evidenced in the passage that is quoted below from a letter sent by the Assistant General Manager Retail, to the General Manager Retail, in October 1972. In the letter, the Assistant General Manager indicated that consignment was favoured because it would permit Texaco to implement a price restoration:

"The price situation in Windsor and Ottawa has been disturbing over the past several months; and we have found it necessary to review and alter Retailer Assistance a number of times in this period due to price actions by our competitors.

"In anticipation that these markets could require further retail price changes in the foreseeable future, the writer agrees with the Division recommendations for consignment in Windsor and Ottawa for the following reasons:

1. Apparently our major competitors view the 'competitive area' legal aspect differently from ourselves, and as price changes occur, we are encountering increasing difficulty in defining these areas. As a result, there is growing concern that in endeavouring to remain competitive in price, we run the risk of price discrimination.
2. On R.A.P. [Retail Assistance Plan] we cannot control retail prices. Under Consignment we could establish a more desirable type of on ocation 'price sign' program.
3. *Consignment will enable us to more effectively implement restoration.*"

(Document # 50258, October 2, 1972, Texaco, emphasis added)[622]

Consignment, therefore, was seen by Texaco as an 'effective' method of restoring prices. Texaco may have used consignment to lower prices in the face of unbranded competition; however, its ultimate objective was to raise or to restore prices to their previous levels. That its ultimate purpose was to facilitate restoration indicates that it was meant to reduce and not to facilitate competition.

Consignment was envisaged not only as an effective tool to be used against existing firms but it was also seen as a way of deterring entry. Texaco, like Shell, saw the adoption of a policy of immediately disciplining new entrants as a way to reduce entry. For example, the Vice-President Ontario in 1972 described this use of consignment:

"Where a private brander is entering a town for the first time, where the market has heretofor been clean for branded products, we should act aggressively and price at parity with the private brander from the day he opens, or preferably, when he starts construction lower our retail price to what we *anticipate* might be the private brander price. This will have the effect of bringing down the major price structure in that town but *it will also have the effect of slowing down the growth in the number of places where private branded gasoline at lower price levels is available*. In order to facilitate price movements of this kind, it would seem desirable to reinstitute the mechanism of 'gasoline on consignment' to retailers as it is a more efficient and quick way of moving prices up or down to accomplish our marketing strategy in a good area, ..."

(Document # 45796, November 3, 1972, Texaco, single emphasis added)[623]

This exhibits the same "disciplinary" intent found elsewhere (Document # 57439).[624] Texaco felt that if unbrandeds came to recognize that the majors would react to entry with consignment, then there would be less entry.

Consistent with Texaco's stated intent to use consignment against price competition, to control prices, to reduce entry and to affect a price restoration was, Texaco's action during the price restoration of 1973. In 1973, with the price restoration, consignment was generally removed. In 1973, with the tightening of supply, prices in the retail market were moved upwards. A letter from the Quebec Division Manager to the Vice-President Sales and General Manager dated July 31, 1973 described the upward movement and Texaco's intent to remove consignment:

> "... we have been studying for some weeks the method we should be using for the cancellation of our Consignment Plan should Executive Management decide, at some future date, to terminate the Plan in whole or in part.
>
> ...
>
> "... since the re-instatement of the Consignment Plan in December 1972, retail pump prices have increased continuously without being off-set by any reduction due to market conditions. As you are aware, our retail pump prices have increased from \$.04 to \$.10 per gallon, between January lst, 1973 and July 31, 1973."
>
> (Document # 56472, July 31, 1973, Texaco)[625]

A letter from the Assistant General Manager (Retail) to the Vice-President Sales dated August 3, 1973, indicated that even in removing consignment a selective approach was recommended:

> "Analyses of the retail markets in Quebec and Ontario Divisions indicate that we could now commence to cancel Consignment in some areas. There is as yet no particular pattern appearing which would indicate that Consignment should be discontinued in all or any large areas, such as a District; however, retail prices in many small competitive areas appear to have firmed to the point where this is possible.
>
> "The writer recommends that we give the Divisions authority to discontinue Consignment where competitive conditions permit . . .."
>
> (Document # 56471, August 3, 1973, Texaco)[626]

This policy was eventually implemented. A letter of August 9, 1973, to Ontario District Managers instructed them to remove consignment on a selective basis:

> "We have recently completed a survey of current retail pump prices at all accounts on Consignment throughout the Division, and it is evident that the general firming of prices in many areas now indicates we should consider removing a number of Retailers from Consignment.
>
> "The accounts in question will presently fall into the following general categories.
>
> "A. Current pump prices will be near or at the top of the existing Schedule 'A' in effect, and the Retailer's commission will be \$0.090 per gallon or higher.

"B. Removal of accounts from Consignment will still enable our Retailers to maintain pump prices that are competitive with other major branded outlets with no decrease in margin by purchasing at Dealer Tank Wagon Price.

"C. *The objective is to remove Consignments only in areas where there is no concentration of unbranded competition. Before removing Consignment in areas with heavy unbranded competition the writer should be contacted.*

"D. Firming of prices will be considered to be on a long-term basis and not just a temporary situation which can be expected to change in the near future.

. . .

"Would you proceed immediately on the basis outlined above and if there are any questions please let us hear from you."

(Document # 58395-6, August 9, 1973, Texaco, emphasis added)[627]

With price restoration accomplished, consignment had been removed. Texaco's actions in Ontario regarding consignment and the restoration of prices correspond to its stated intent. It was a short-term policy meant to restrict the growth of unbrandeds and to raise prices to the branded level. As this objective was accomplished in late 1973, the need for this policy was removed and it was phased out.

While, in Ontario, Texaco replaced temporary allowances in 1972 with consignment, the situation in Quebec was different. In that province, Texaco had generally relied on consignment, not temporary allowance programmes, from May 1959 to December 1971 (Document # 56472).[628] In doing so, Texaco generally followed the policy of matching Imperial or a combination of Gulf and Shell up until 1970 (Document # 46256).[629] In 1970, this policy was modified to permit Texaco managers to meet unbranded prices in areas where the other three did not have major representation (Document # 8789).[630]

After a brief period without consignment in early 1972, the practice was re-implemented in Quebec. The reasons were identical to those quoted previously for its general use. The order that was issued to District Managers instructing them to re-implement consignment makes it clear that company control was required because of a return to "unstable" price conditions:

"The Consignment Plan will be re-instituted throughout the Quebec Division due to the present unstable condition of retail prices of gasoline."

(Document # 8772, December 7, 1972, Texaco)[631]

When price stability re-emerged in late 1973, consignment was removed once again in Quebec (Document # 8900).[632]

Quebec was one of the two regional markets where, throughout the nineteen sixties, independents had access to foreign product. Entry of independents was easier in Quebec than in the west because they did not have to rely only upon domestic refineries for supply. The wholesale policies of the majors would

not, by themselves, have been sufficient to control the unbrandeds. It is, therefore, significant that Texaco used consignment almost continuously in Quebec.

Also significant is Texaco's observations on the success of its consignment programme in Quebec. Texaco felt it was able to use consignment 'effectively' in that province. In evaluating the consignment programme in Quebec, the Vice-President (Sales) commented:

> "After considerable investigation and discussion, including the meeting held by Ontario and Quebec Division and Executive Office personnel on March 2nd, the writer is convinced that generally speaking the tactics employed by Quebec Division constitute a more effective defensive pricing policy than the pricing reactions used by Ontario Division. *Quebec Division has had practically all of its 1,250 Retailers on some form of price assistance for some time and apparently has been able to maintain share of market, profitability, and Dealer viability in the face of extreme market pressures.*"
>
> (Document # 56741, March 17, 1972, Texaco, emphasis added)[633]

In light of the objectives set by Texaco for its consignment programme — to control prices, to reduce entry, to effect high prices through successful price restorations — Texaco's evaluation of the 'effectiveness' of its programme is evidence that its disciplinary practices worked.

(f) *Texaco's Use of Second Brands*

Texaco followed the lead of Imperial and Shell in the use of second brands as well as with consignment and allowances. Texaco studied the actions of the other companies in this area and adopted a similar though less extensive policy with respect to second brands. Second brands provided Texaco with a further refinement of the price discrimination scheme that was aimed at controlling and disciplining the independents. As such, it was an extension of both temporary allowances and consignment.

Although the use of second brands in the industry was not confined to the early nineteen seventies, its importance increased dramatically at this time. As competition with the independent unbrandeds intensified, Imperial and Shell moved to debrand more and more stations. The reason, as one Texaco document expressed it, was that with second brands a company was better able to tailor its geographic price discrimination programme to fight the unbrandeds while it tried to maintain high branded prices elsewhere:

> "In Sept of 1971 in Ont the majors pulled all subsidy and reverted to full D.T.W. Price and the Dealer moved to full retail
>
> "The jobber moved up but still held a differential of 05 [sic] to .08 and his volume increased some more . . .

"It was at this time that many Branded s/s were debranded because the Major Co. could debrand and lower the price whereas it could not afford to lower the price of all the branded outlets in the market area"

(Document # 45781-2, Undated, Texaco)[634]

This process was monitored by Texaco officials. A report from the General Manager to the President, dated November 8, 1971, stated that, with regard to the Western Division,:

"There is a gradual price deterioration in this Division, with the number of Econo and unbranded locations increasing rapidly. . . .Imperial Oil are reported to be developing more Econo outlets along with 'Pay Less' in all major centers."

(Document # 55908, November 8, 1971, Texaco)[635]

The move to debrandeds by Imperial and Shell continued. In an April 7, 1972 paper entitled "Service Station — General", the Assistant General Manager Retail stated:

"Present marketing problems arise from the growth of unbranded marketers supplied by both major and minor refiners of petroleum products. Our two major competitors, Imperial and Shell, have apparently adopted the following marketing strategy:

. . .

"(2) Conversion of selected branded locations to unbranded in an effort to obtain a share of the retail price discounted gasoline market.

. . ."

(Document # 8786, April 7, 1972, Texaco)[636]

A report on competitive activities, dated April 1972, from the General Manager to the President stated that in the retail pricing area "majors are losing share of market to unbrandeds who are expanding rapidly" (Document # 50278).[637] Shell, he noted, had stepped up their programme to convert branded outlets to unbranded and their "Gasmart locations in Ontario are being re-identified 'Beaver' which is a wholly owned subsidiary" (Document # 50278).[638] Under the heading "Construction", the General Manager noted:

"Shell and Esso are racing ahead with conversions to unbranded and construction of car washes. . . .Esso is continuing their conversion from branded franchise to Econo, with new facilities."

(Document # 50278-9, April 25, 1972, Texaco)[639]

Further observations by Texaco on the establishment of second brand networks confirm its first impressions. A memorandum entitled "Price Policy and Philosophy" dated June 1972, by the Assistant General Manager Retail noted that Imperial and Shell were still maintaining high branded prices but were establishing second brands to compete with the independents:

"Essentially, in all areas, the following appears to be the present pattern:

1. Unbranded jobbers and private brand retailers selling at prices lower than branded, major marketer retailers are capturing an increasing share of the market.

"2. Major brands, notably SHELL and IMPERIAL, are apparently reluctant to meet this price competition on a direct branded basis, and have chosen to retain their share of the market by:-

(a) Establishing their own private brand outlets.

(b) Rapidly expanding car wash and self-serve facilities, both of which have the effect of perceivably reducing the retail price of gasoline."

(Document # 58384, June 28, 1972, Texaco)[640]

Again, in a report to the President, dated August 15, 1972, on "Significant Developments" the General Manager outlined the growing emphasis by Imperial and Shell on debrands:

"Imperial are building and opening 'Econo' type outlets at an accelerating rate. Shell are continuing to debrand their branded outlets, opening them under various trade names, the major one being their wholly owned 'Beaver' subsidiary."

(Document # 53618, August 15, 1972, Texaco)[641]

In light of Texaco's follower role, its adoption of a similar policy with respect to a second brand network is consistent with its actions with regards to both the temporary allowance and consignment programmes. The industry leader — Imperial — had begun to develop its second brand Econo stations in the early nineteen sixties in British Columbia (Document # 45787).[642] Texaco's history of using second brands goes back to the same period. In 1962, the Merchandising Task Force proposed to experiment with the operation of an '*unbranded*' (Regent) gas bar because independents had developed this form of operation:

"As an increasing number of jobber owned and operated unbranded gas bars appear, in Montreal particularly, it has been felt necessary to experiment with an unbranded gas bar operation, . . .

"The final drawings have been prepared and approved for the Pie Neuf gas bar, the lease will be signed within the next several days, and construction will start by the middle of April."

(Document # 7422, April 18, 1962, Texaco)[643]

Texaco also experimented with debranding a Texaco station to gauge its impact upon an adjoining unbranded station. Texaco's purpose was explained in the same document:

"In a number of instances, particularly in large metropolitan areas, unbranded jobber competition is making serious inroads into the market, and at the same time undermining branded Texaco outlets. With a \$.02/gallon, and sometimes \$.03/gal-

lon, price advantage, these outlets are often doing two, three or even four times the volume of a Texaco branded service station close by. It has been recommended that on a test basis, a Texaco station being influenced by such competition should be rebranded to Regent, and such unbranded competition be met on a parity price basis.

. . .

"Company-owned service station #550, Long Branch, Ontario, will be rebranded Regent, . . . "

(Document # 7424, April 18, 1962, Texaco)[644]

After these experiments Texaco went on to develop a second brand network in Ontario using the name Regent and in Quebec using the trade name Indépendent. Regent had been purchased in 1957 and most stations were converted to Texaco brand stations. When Texaco decided to develop its second brand network, these were switched back to Regent. A similar process was followed in Quebec (Toronto Hearings, 1975).[645] In addition, some Texaco stations that had not been originally in the Regent network were debranded to Regent.

While Texaco followed the other majors in its use of second brands, it confined their application to a relatively restricted area (Toronto Hearings, 1975).[646] For example, Texaco had fewer private brand stations than either Shell or Imperial. As Table 31 shows, Texaco and Gulf both used second brands much less than either Imperial or Shell.

TABLE 31

SUMMARY OF SECOND BRAND STATIONS
OWNED BY MAJORS, DECEMBER 1, 1972

Company	*No. of Second Brand Stations*	*Estimated Volume (gallons)*
Imperial	81	38,515,000
Shell	82	31,755,000
Gulf	29	10,635,000
Texaco	28	3,535,000
Sunoco	16	6,800,000
B.P.	14	5,000,000
Home	3	1,690,000
Standard	1	360,000
Other	3	456,000

Source: Document # 45784, Texaco[647]

Texaco's general policy was to use consignment and temporary allowances following the other majors and only to use second brands in a few areas where there was "strong private brand competition". In a paper by the Ontario

Division entitled "Pricing Philosophy and Authority", dated June 1971, the problem with "private brand competition" was outlined:

> "Private brand competition has increased in number of outlets and in percentage of the retail gasoline volume sold in Ontario. Our most recent market survey made in March 1971 showed that private brand had 18.2% of the retail gasoline volume in major cities. This is an increase of 4.2% over 1969. In each District we find the number of private brand outlets increasing and, for example, in Ottawa it is estimated that by 1972, one out of every three retail gallons will be sold through private brand. Pump prices at private brand outlets range from $0.07 to $0.12 below major brand retail pump prices."
>
> (Document # 58389, June 14, 1971, Texaco)[648]

Texaco's policy of restricting its use of second brands to very specific situations was also described in that paper:

> "Texaco's philosophy has been to wait until Imperial Oil or Shell and Gulf or any two of these competitors have assisted their retailers to establish lower retail pump prices. *In specific marketing areas where there has been strong private brand competition or situations involving major oil company private brand outlets, we have established Regent locations selling at competitive retail pump prices.*"
>
> (Document # 58393, June 14, 1971, Texaco, emphasis added)[649]

As was described above, the purpose of the second brand network was to meet the price competition of the unbrandeds. The Assistant General Manager (Retail) confirmed their objective as:

> "Purely to endeavour to meet the competitive practices in that particular area. . .
>
> .
>
> . . .
>
> ". . . in almost all areas where we opened a Regent location there were unbranded locations already in that area, either unbrandeds that were independently owned or an unbranded that had been established by one of the other oil companies."

(Testimony of Mr. R. Krantz, Assistant General Manager of Retail, Texaco, Toronto Hearings, 1975, Vol. VII, p. 755)[650]

Other statements also emphasize that Texaco aimed its second brand stations towards the unbrandeds:

> "The writer recommends that we explore the possibility of establishing individual locations which we feel should sell at unbranded prices as jobber locations."
>
> (Document # 56743, March 17, 1972, Texaco)[651]

> "..., we recommend expansion of the following kinds of marketing facilities:
>
> (1.) De-branding of certain selected service stations to compete directly with the unbranded marketer and not necessarily to the Regent or Independent name."
>
> (Document # 8787, April 7, 1972, Texaco)[652]

"It has been recommended that on a test basis, a Texaco station being influenced by such ['unbranded jobber'] competition should be rebranded to Regent, and such unbranded competition be met on a parity price basis."

(Document # 7424, April 18, 1962, Texaco)[653]

One area where Texaco used a private brand against the independents was in Hamilton. A 1969 report by the District Manager to the Vice-President Sales on the retail gasoline sales in District #3, Hamilton, stated that Texaco's sales performance in this area was "causing considerable concern" (Document # 54343)[654] and that:

"The Unbranded Jobber has a direct bearing on our Retail position. In the City of Hamilton they presently have 18.9% of the market . . .as against the Branded outlets (Shell with 16.6%, Imperial Oil with 15.3%, and Texaco with 15.2%)."

(Document # 54343, September 12, 1969, Texaco)[655]

The District Manager explained that to counter the growth of the independents, Texaco opened several private brand stations itself:

"To assist us in offsetting some of the decreases we have experienced, certain steps have been taken:

"a) Two new independent retail locations have been established both of which opened in the late Spring of this year."

(Document # 54345, September 12, 1969, Texaco)[656]

When Texaco did open a private brand station in the vicinity of an independent, it was Texaco's policy to "match" the unbranded jobber price competition in the market or to price one or two cents above. Texaco's Vice-President, Sales, in 1975 testified:

"The retail price would go down to match the unbranded company. If we did not think we had to go down right to maximum, we might be a cent or two cents above."

(Testimony of Mr. J.C. Wattie, Vice-President Sales and General Manager, Texaco, Toronto Hearings, 1975, Vol. VII, p. 812)[657]

An October 27, 1971 report from the General Manager to the President demonstrates how Regent was used in this fashion. In District #2, Toronto, private brand outlets were posting either 42.9 cents or 43.9 cents while Regent was at 43.9 cents (Document # 55921).[658] In District #3, Hamilton, private brand locations were at 45.9 cents and 46.9 cents with pockets at 42.9 cents and 43.9 cents. Three Regent locations were priced at 42.9 cents or 43.9 cents (Document # 55921).[659] In District #8, Belleville, a number of private brands were at 44.9 cents with some at 43.9 cents and 41.9 cents while Regent was posting 44.9 cents (Document # 55923).[660] A June 14, 1971 Texaco document entitled "Price Philosophy and Authority" from the Ontario Division noted that Imperial's Go-Gas and Gas-For-Less outlets sell "at retail pump prices matching the lowest of any private brand location in the area" (Docu-

ment # 58389).[661] Thus, the policy of both Texaco and Imperial in pricing private brands against independents was similar.

One of the major reasons Shell entered the second brand market revolved around the 'control' of the market that it anticipated would follow. This was also one of the reasons voiced within Texaco for the establishment and extension of a second brand network. For instance, a letter from the Western Division Manager to the General Manager in 1972 recommended that Texaco not take on jobber business but that it establish its own "controlled" group of outlets:

> "We believe that we should not take on this kind of jobber business, but we also feel strongly that we should try to get a share of this 'price' market. We believe the way to do it is through a controlled group of outlets of our own, preferably Regent."
>
> (Document # 56166, February 15, 1972, Texaco)[662]

It was also the case that Texaco had little intention of using the second brand route as anything other than a temporary instrument by which unbrandeds could be disciplined. The Assistant General Manager (Retail), in recommending that Texaco use unbranded jobber locations, felt this would have an advantage since Texaco "would not be building what could eventually become a monster, nor would we be enhancing the image of unbrandeds generally" (Document # 56743).[663] The Assistant General Manager (Retail) confirmed the temporary nature of Texaco's use of second brands:

> ". . . we were using Regent only as a defensive type of a marketing facility in that, when it appeared to us that there was no other way that we could stay competitive in the market place, would we establish or change an outlet to a Regent-type of designation?
>
> ". . . it was strictly a short-run marketing strategy, one that would permit us to maintain our volumes at a given service station area until we could develop some other type of marketing facility under our own brand name."
>
> (Testimony of Mr. R. Krantz, Assistant General Manager of Retail, Texaco, Toronto Hearings, 1975, Vol. VII, pp. 748-9)[664]

Consistent with the intended temporary use of this tool is the fact that Texaco used consignment at its second brand stations. The Assistant General Manager, in discussing the possible extension of Texaco's unbranded stations, commented that "consignment will be used in all Divisions where it is necessary to de-brand service stations" (Document # 58386).[665] This recommendation was adopted in, at least, Quebec for in 1973 when the Quebec region had consignment removed, it was instructed not to do so for their second brand Indépendent Petroleum locations (Document # 8900).[666] Consignment, as has already been demonstrated, was used to permit Texaco to control the price and to 'better implement restoration'. As already demonstrated , Shell's second brands were also intended to be used to force prices at the independent stations upwards. In

light of Texaco's appreciation of the extent of the second brand policy of others, of its understanding of the use to which consignment had been put in the early nineteen sixties, and of its own appreciation of the value of consignment in restoring prices, the use of consignment in their second brand operation along with the acknowledged 'temporary' nature of many of the stations confirms that, for Texaco, second brands were to be used like allowances and consignment as part of their contribution to the strengthening of the oligopoly.

Therefore, like both temporary allowances and consignment, second brands at Texaco were temporary instruments aimed at the independent private brand marketers with the intent of giving Texaco a measure of control over these firms and restoring prices to their previous high levels. The same disciplinary strategy with the same objectives was being simultaneously followed by the other majors. The combined influence of these policies served to maintain the 'excessive' price levels established in the industry.

5. *Imperial Oil-Marketing Practices*

(a) *Introduction*

As in the case of Shell, the marketing policies of Imperial Oil were significant because of the position of this firm in the industry. Along with Shell, it acted as the industry leader in marketing. Examples of the other national brand majors aligning their policies with those of both Imperial and Shell have already been cited. Imperial also played the same role for the smaller regional marketers. One of these companies — British Petroleum — indicated that it 'keyed' its pricing policy in the early nineteen seventies on Imperial and Shell:

> ". . . keying on the competitive activities of *Shell and Imperial* particularly, we have raised the level of pump prices at price-supported retail outlets in both Quebec and Ontario to a minimum of 49.9 cents per gallon. . . ."
>
> (Document # 11442, May 9, 1973, B.P., emphasis added)[667]

While Shell was sufficiently large and aggressive that it was viewed by some as sharing the leadership role with Imperial, Shell itself referred to Imperial as the "market leader" (Document # 32916).[668] And Imperial regarded itself as the dominant firm. The Executive Vice-President, W.O. Twaits put the matter forthrightly in December 1955: "we are the price leader" (Document # 128001).[669] An Imperial analysis of the Prairie region noted that "price changes by IOL have resulted in competition following" and that Imperial was "recognized as the barometric price loader [leader]" (Document # 123456).[670] Similarly, an Imperial memorandum on the possible effect of changes in Combines laws referred to Imperial as "a frequent price leader" (Document # 120670).[671]

Since it was the acknowledged leader, Imperial developed its policies with this in mind. For example, an Imperial study of the Quebec market

outlined Imperial's objective in 1972 as the maintenance of the high prices that it had been able to establish. To maintain the high branded prices, Imperial intended to utilize its leadership power as the following excerpt indicates:

"Objectives (Gasoline) Recognized Need to 'Act Now'.

1. Maintain the hard gained high Imperial existing pump price levels and encourage competitors (Shell) who are also so inclined to 'hold fast.'
2. Encourage 'price cut' inclined majors to 'lift' via 'tolerance method'."

(Document # IGDS 417, March 22, 1972, Imperial)[672]

Other examples show that Imperial was able to develop its policies with the knowledge that the other majors would generally adopt the same policies. For instance, in 1972, Imperial noted that "Shell takes an aggressive segmentation approach in the automotive market and is Imperial's largest competitor" (Document # 120077),[673] but that "as a result of heavy investment Shell desires to keep the major brand price high" (Document # 120077).[674] This is the same objective that Imperial adopted in the excerpt quoted above. In analyzing Gulf's policies, Imperial observed that this major "follows Imperial and Shell in pricing" (Document # 120089).[675] As for Texaco, Imperial concluded that it "follows other majors" (Document # 120090).[676]

While the other majors could generally be expected to adjust to Imperial's policies, this was not the case with the independent marketers. Imperial, like Shell, developed marketing policies which were aimed at the independent sector. Imperial did not view the other large integrated members of the oligopoly as "the prime competitive problem" since these firms had "very similar consumer offerings and thus costs" (Document # 180281).[677] In Imperial's view, the "real competitive threat is price marketers" (Document # 180245).[678] Imperial's concern with discounters lay in their "marked cost advantage" (Document # 180281).[679] Imperial's views are summarized in the following excerpt taken from a 1972 study of the Ontario automotive market:

ONTARIO — SUMMARY OF AUTOMOTIVE ENVIRONMENT & COMPETITIVE OUTLOOK

CONCLUSIONS	*SIGNIFICANCES*
. . .	. . .
MAJOR BRANDS AND THEIR DEALERS HAVE VERY SIMILAR CONSUMER OFFERINGS AND THUS COSTS.	*MAJOR BRANDS ARE NOT OUR PRIME COMPETITIVE PROBLEM.*
DISCOUNTERS HAVE MARKED COST ADVANTAGE.	DISCOUNTERS CAN RUN AWAY WITH INDUSTRY IF UNCHECKED.
. . .	. . ."

(Document # 180281, Undated, Imperial, emphasis added in body)[680]

Imperial's awareness of its major brand's lack of competitiveness can be found in a number of its internal studies. For instance, Imperial noted:

> "The major brand conventional service station is in difficulty because it is uncompetitive.
>
> — Conventional stations are high cost because of the type of building and the full-service type of offering.
>
> — Conventional stations are generalists with low productivity and have difficulty competing with specialists and mass merchandisers with high productivity and low unit operating costs."
>
> (Document # 118888, December 12, 1972, Imperial)[681]

Imperial's Executive Vice-President, R.G. Reid defined the problem with the major brand as one of 'inefficiency':

> "With respect to our opportunities in the debrand market it can be argued that they exist solely because of the inefficiencies in the major brand."
>
> (Document # 118966, May 9, 1973, Imperial)[682]

The independent marketers, as Imperial recognized, were both more efficient and more productive than the Imperial system:

> "The new competition which has emerged, employs both specialization and economies of scale to become very much more efficient and productive than the Imperial-Esso dealer system."
>
> (Document # 119930, Undated, Imperial)[683]

As a result of their lower costs, the independents could charge lower prices than the majors. It should be pointed out that Imperial, like Shell, recognized that the lower prices being charged by the independents were not primarily the result of their having lower acquisition costs for product. Instead, lower prices were the result of the independents' lower operating margins. An Imperial study of four major discounters which it faced in Ontario stressed that the advantage of the independents lay primarily in their lower marketing costs:

> "Much analysis has gone into the various types of discount brand outlets we face. Here are four which represent over 40% of the discount total. In urban centres, the two most common are Canadian Tire, using a coupon to cross merchandise gasoline with their stores, and chains like Arrow using a dealer system and marginal properties. In comparison, the typical Esso company-owned station has a lower profit and return.
>
> "In the non-urban areas, we face a host of brands of which XL is typical. They have a few very high volume stations at minimum prices but the majority of their outlets are dealer-owned in secondary locations, often with additional sources of income. . . .

"*Overlay Comparison to Esso*

Looking into the detailed economics of all four competitors, we see that their cost of product ranges from ½¢ to 2½¢ per gallon below SIRV. *They have a wholesale cost advantage of 2-3¢ per gallon, primarily due to our facility costs, and they have a retail cost advantage of 3½-8½¢ per gallon versus major brand dealers margins.*

"*In summary their economic advantage is not primarily due to cheaper supply but comes about from a different consumer offering and thus lower marketing costs.* They have used price to attract volume and have achieved lower costs and higher returns accordingly."

(Document # 118394-5, March 9, 1972, Imperial, emphasis added)[684]

Similar statements are contained in the following summary made by Imperial of the cost advantages of the independents:

"In fact, on a wholesale/retail system basis, the discount brands have an advantage in supply cost of only approximately 2.5 cents per gallon over the major brand wholesale/retail system. *The discount brands are able to sell at substantially lower retail prices not because of significant differences in supply costs but because they are more efficient low-cost marketers at both the wholesale and retail level.* For example, the Esso dealer operates on a 10.5 cent per gallon retail margin whereas the operator of a Suny's gas bar operates on a 2.0 cent per gallon retail commission. The difference in retail margins at the operator level can therefore account for up to 8.5 cents per gallon difference in the pump price. Imperial's wholesale marketing margin is approximately 8 cents per gallon whereas discount brand wholesalers work on a margin of 5 cents per gallon which can account for a further 3.0 cents per gallon in price difference. In summary, the maximum retail price differential of 14 cents per gallon on the pump is possible because the discount brand dealer can operate for 8.5 cents less than the Esso dealer, the discount brand wholesaler can operate for 3.0 cents less than Imperial, ... The discount branders do not have a significant supply cost advantage over the cost of supply to the Imperial Oil-Esso Dealer marketing system. The discount branders are able to offer lower prices because they have put together a low cost customer offering which trades off price against service, convenience, credit and all the other extras identifiable with the Esso full-service offering."

(Document # 116604-5, Undated, Imperial, emphasis added)[685]

It is important to recognize that the lack of efficiency in the major brand system was not something that was suddenly recognized by Imperial in 1972-73. In 1965, an Imperial study of the Ontario Retail Gasoline Market noted that new retail marketers were operating with a "high volume, low unit cost operation" (Document # 118982-3).[686] These independents, Imperial noted, held "overhead to a minimum by offering none of the additional services such as credit, which are offered by the major companies" (Document # 118983).[687] While these circumstances presaged the need for change, Imperial felt the transition "would have to come over a period of time":

". . . the very scale of our existing investment ensures that any effective transition in the marketplace will have to take place over a period of time. Change must be in terms of evolution, not revolution."

(Document # 118984, May, 1965, Imperial)[688]

The policies followed by Imperial and the other majors served to delay the adjustment, the need for which was demonstrated by the entry of independents. A brief prepared for the Ontario government in the early nineteen seventies noted that the majors adjusted their marketing network slowly to the new conditions:

> "The major brand marketers, saddled with a large investment in full service retail outlets, have been slow to react to these new forms of competition."
>
> (Document # 119931, Undated, Imperial)[689]

Data on the majors' retail/wholesale margins indicates the problem that the majors perceived during the period under study. Imperial's comparisons of the differential between their own costs and those of the independents show the marked cost advantage of the independents. In 1970, a study done by Imperial listed the majors wholesale/retail margin as 17.4 cents per gallon, that of normal private brand operators as 11.1 cents per gallon and that of discount private brand operators at 7.8 cents per gallon (Document # 120066).[690] A 1972 study comparing the margins of Imperial to those of discounters found similar results. Imperial's total wholesale/retail margin was 17.2 cents per gallon; the minimum discounter 13.7 cents per gallon; and the maximum discount dealer, only 4.7 cents per gallon (Document # 180143).[691]

Another indication of the majors' lack of substantial progress in improving its efficiency can be obtained from a comparison of margins earned in marketing and Imperial's rate of return. If the majors had adapted to the new forms of marketing, then they should have been able to at least earn the opportunity cost of the capital employed in marketing. This was not the case. In 1960-61, Imperial's pooled wholesale/retail margin was some 16 cents per gallon in Quebec (Document # IGDS 1777).[692] Its return on automotive gasoline sales was about 2.5 per cent on capital employed (Document # IGDS 160).[693] In 1971, it once again earned 16 cents per gallon but its rate of return was still less than 2.5 per cent on marketing (Document # IGDS 160-1).[694]

Its performance elsewhere was much the same. Table 32 compares wholesale/retail margins being earned in Ontario to Imperial's return on capital employed. By 1970, the margins had reached 17.6 cents per gallon — a level far above the cost levels of independents. Yet even with these margins, Imperial's return was only 5.7 per cent — below its cut-off return on investment of some 9 per cent.[1] Any gains in efficiency that might have been made by Imperial still did not allow it to earn its required rate of return in the Ontario marketing sector.

1. Company "'hurdle rate' is calculated as '9% DCF'" in 1971 (Document # 101204).[695] Specific 'petroleum products' rate is calculated as 8-9% in the same year (Document # 101208)[696] A rate of 7% was used to evaluate the desirability of divestment in Quebec. (IGDS # 1394)[697]

TABLE 32

A COMPARISON OF WHOLESALE/RETAIL MARGINS
AND RETURN ON CAPITAL EMPLOYED
FOR IMPERIAL OIL, ONTARIO
1960 – 1970

Year	*Wholesale/Retail Margin*[1] *(¢/gal)*	*ROCE*[2] *(%)*
1960	11.1	2.5
1961	11.3	1.5
1962	10.4	–3.5
1963	10.1	–5.0
1964	10.2	–2.0
1965	13.3	–0.5
1966	13.4	3.0
1967	14.3	4.0
1968	13.4	5.0
1969	16.5	5.5
1970	17.6	5.7

Source: 1) Document # 179672 Imperial,[698] (see also Document # 180269 Imperial for graph version).[699]
2) Extrapolated from a graph on Document # 178129, Imperial[700]

Imperial acted as the leader of a group of firms that accounted for most of the industry's sales and whose members offered a similar high cost product. This group was threatened by a number of new entrants offering gasoline at lower prices. That the new entrants to marketing should have been able to operate at lower costs than the vertically integrated majors presented the latter with some difficulty in designing an effective response. In the early nineteen sixties, their reaction had been to adopt predatory and disciplinary policies. In the late nineteen sixties, the majors were still desirous of a minimal adjustment in their marketing strategy. While, in the earlier period, their disciplinary policies had been effective, they were costly because of their broad application in markets. In the late nineteen sixties, led by Imperial, the majors adopted a more selective disciplinary strategy. The nature of the refinements that Imperial introduced over time for the purpose of disciplining the independents is developed in proceeding sections.

(b) *Imperial's Policy to Discipline the Independents in the Period 1957-64*

In the late nineteen sixties, Imperial Oil moved to emphasize a market segmentation approach using second brands. This policy, like those policies of the early nineteen sixties was used against the independent sector. All of these policies were recognized by the industry to have been disciplinary in intent. The severe price wars of the early nineteen sixties were, in British Petroleum's words, "waged principally by Imperial Oil" (Document # 11414).[701] In commenting on this period, Texaco observed that the method used to achieve "price

stability" was that of "discipling" [sic: "disciplining"] the unbrandeds by lowering prices "in order to force unbranded jobbers to raise their prices" (Document # 57439).[702] The policies adopted by Imperial in the late nineteen sixties were recognized by the industry to have had the same objectives. For instance, Gulf noted that the "Esso brand provides price leadership" (Document # 66186)[703] while Imperial's second brand was meant "to directly meet reseller competition" (Document # 66186)[704] and was to be used as a "weapon against the unbranded price discounters where necessary" (Document # 72354).[705] Shell, too, observed that the Esso second brand network was meant to be used against the unbranded marketers (Document # 38497).[706] British Petroleum was equally explicit as to the purpose of the second brand chains of Imperial and others:

> "This will no doubt in time raise the price at all unbranded outlets and get the price more in line with the branded dealer."
>
> (Document # 9807, June 20-22, 1972, B.P.)[707]

Therefore, in both the early and the later periods, Imperial's strategies were seen by other firms to be employed for disciplinary purposes against independent marketers with the purpose of raising gasoline prices in general.

Since Imperial's disciplinary pricing policy of the early nineteen sixties was a precursor to its second brand policy of the late nineteen sixties, Imperial's policies in this early period shed considerable light on events in the latter part of the decade. In particular, they show that Imperial consciously implemented a disciplinary pricing strategy with the intent of preventing the independents from establishing large discounts from major brand prices — even though these large discounts would have reflected the lower costs of the independents. Imperial designed a strategy aimed at forcing the independents' prices up. Imperial's objective was to eliminate some independents and to restrain considerably the growth of those who survived. Moreover, Imperial sought the collaboration of the rest of the industry in order to attain this objective.

One of the areas where Imperial's disciplinary policy met with success was in the western provinces. Shell, for instance, based its decision to acquire North Star Oil partly on the stability of the Prairie market and noted that one of the reasons for this stability lay in the pricing strategy being employed by Imperial against independents in urban Prairie markets. In referring to Imperial's policy, Shell noted that it could continue to count on Imperial to contain independents:

> "This same attitude *would* be adopted towards unbranded as evidenced in Winnipeg where the unbranded retailers were being contained by neighbouring branded outlets selling competitively."
>
> (Document # 41820, September, 1959, Shell, emphasis added)[708]

Imperial's own documents show the accuracy of Shell's observations on Imperial's disciplinary intent. Furthermore, they provide details on implementation that show how the majors communicated with one another so as to coordinate their response to the independents.

Imperial's policy in response to localized price competition is outlined in the following proposal made to deal with the Winnipeg market in 1960. The central focus of its strategy throughout this period was aimed at controlling the discounts taken by the independents. In order to do so, Imperial adopted an aggressive pricing strategy to force the independents to price in relationship to the majors' brand and not their own costs. The set of independents' prices — discounts off the brand — that Imperial aimed at in 1960 are outlined in the following excerpt:

"Rather than concern ourselves immediately with the retail price of our gasolines, we would accept a series of price differentials with the opposition which we feel we can live with. . . .The following are a suggested list of these differentials:

(a)	Dominion Motors (product imported from U.S.)	2¢
(b)	Henderson Thriftway (product supplied by B.A. subsidiary Anglo Canadian)	2¢
(c)	Simpson Sears (product supplied by Texaco)	1¢
(d)	John D. Oil (Anglo American branded dealer)	1¢
(e)	Beaver Oil (Texaco branded dealer)	1¢
(f)	Roco Stations (products supplied by I.O.L.)	1¢
(g)	Consolidated Car Mart (I.O.L. branded dealer)	1¢
(h)	Polo Park (I.O.L. branded self-serve)	1¢
(i)	Miscellaneous ([sic] accounts such as Husky, possibly one account from North Star, Canadian Oil and a few others of low volume, over which we would not wish to start a price war.	1¢"

(Gasoline Western, Document # 68-9, July 27, 1960, Imperial)[709]

By controlling the differentials between the majors and the discounters, Imperial felt it could 'stabilize' the "pricing in Winnipeg". Key to this was its willingness to spend a "lot of money" to convince the discounters that they had to abide by these differentials. The following excerpt outlines the way in which the policy was to be implemented:

"Having established this policy, any downward move on the part of a competitive dealer in any one of the above categories would immediately result in an overall downward move on our part. Forced to move down we would no longer allow the competitor the differential we had originally allowed him, but rather would meet his price 'on the nose'.[1] We would make no secret of our philosophy and it would boil down to this. The competition could accept our differentials or they would get no differential whatsoever. Faced with this policy and knowing that we could move our

1. An April 1961 document indicates that Imperial indeed chose "to meet the unbrandeds on the nose" in the spring of 1960 (Gasoline Western, Document # 188).[710]

dealers down overnight en masse because of our consignment arrangements, we feel the competition would make every possible effort to keep the market clean. There would no longer be any advantage to price cutting. Unquestionably this could cost us a lot of money over a relatively short period of time because certain of the competition might feel we were not serious. We do not feel, however, this would be the attitude taken by any major unbranded, any important semi-branded or any branded marketer. We feel stabilization would come to pricing in Winnipeg within a reasonable period of time."

(Gasoline Western, Document # 69, July 27, 1960, Imperial)[711]

Thus Imperial's policy involved a willingness to invest "a lot of money" to 'convince' the independents to follow an accepted differential. If the discounters did not adopt this differential, Imperial intended to discipline them by meeting the discounters' prices 'on the nose'.

Imperial's objective was detrimental in intent. The objectives of the policy were aimed at hurting the independents, forcing prices upward, and returning to service or non-price competition. The results that were envisaged for the Imperial policy were:

"(a) Reduce the sales at unbranded outlets over a period of years.

(b) Increase their product costs because of reduced throughputs and hence lower this profitability.

"(c) Discourage developments of new unbranded outlets because new unbrandeds would recognize the limitations of this price differential, particularly when starting out.

. . .

(g) Force major competitors into consignment or the equivalent thereof to eliminate any fractional penny differentials amongst their own dealers.

(h) Improve our profitability over any given five-year period although some very vicious price wars might immediately follow.

(i) Establish some sort of orderly marketing with accent on service, product quality, etc.

(j) Eliminate the poorly financed price cutter who contributes nothing to the market, but often causes problems out of all proportion to his position.

(k) Establish a realistic retail price on gasoline that everyone can enjoy a profit on."

(Gasoline Western, Document # 69-70, July 27, 1960, Imperial)[712]

References such as these to "realistic" prices and a return to marketing systems with emphasis on "service" indicate that Imperial's objective was to increase prices. Recognizing the lower costs of independents, Imperial intended to restrict their ability to operate. References to the elimination of some competitors, the reduction of entry, and the enhancement of unbrandeds' costs show Imperial's predatory intent.

Implementation of this strategy required a three-fold approach. First, Imperial's own network had to be forced to adopt a pricing strategy to discipline the independents. Imperial chose to use a consignment policy to this end. Once control over prices was gained, they were moved down to the independents' levels until the differential policy had been 'established in competitors' minds'. The following excerpt illustrates the way in which this was done and provides an evaluation of the success of the policy:

> "The following is an up to date review of retail gasoline prices in Metropolitan Winnipeg. Generally speaking our idea regarding a series of price differentials seems to have been accepted in the trade with some exceptions. It has, of course, been necessary to raise and lower prices, particularly at Polo Park, in order to establish in the competitors' minds that we intend to meet or stay within a certain number of cents of any price they post. At the moment retail prices are more static than at any time during the past five years."
>
> (Gasoline Western, Document # 73, August 19, 1960, Imperial)[713]

Not only was this policy successful in stabilizing prices, but the differentials achieved were those originally set out as the objectives. The same report noted that the independents generally had adopted differentials of only 1 to 2 cents per gallon:

> "Herewith are points of interest. All brands of gasoline are being sold at 37.9¢ and 42.9¢ with the following exceptions.
>
> a. North Star sell their # 1 gasoline for 43.4¢
>
> b. Consolidated Car Mart (I.O.L.) sells at 36.9¢ and 41.9¢
>
> c. Polo Park Garage (I.O.L.) sells at 36.9¢ and 41.9¢
>
> d. Two Texaco accounts sell gasoline at 36.9¢ and 41.9¢
>
> e. One Canadian Oil Company account sells at 36.9¢ and 41.9¢
>
> f. One Canadian Oil Company account sells at 35.9¢ and 40.9¢
>
> g. Three Anglo American accounts sell at 35.9¢ and 40.9¢
>
> h. Three tiny Husky stations sell at 35.9¢ and 40.9¢
>
> i. Dominion Motors (American Import) sell their gas for 35.9¢ and 39.9¢
>
> j. Henderson Thriftway (B.A. Supply) sell their gas for 35.9¢ and 39.9¢
>
> k. Radio Oil Company sell their gas for 35.9¢ and 40.9¢. We know this is unacceptable to the trade over a long period.
>
> l. Simpson-Sears (Texaco Supply) sells gas at 36.9¢ and 40.9¢*
>
> . . .
>
> *Simpson-Sears raised price of # 1 gasoline to 41.9¢ 8/18/60. This account is now in line with what we consider to be an acceptable differential."
>
> (Gasoline Western, Document # 73, August 19, 1960, Imperial)[714]

In commenting on these differentials, Imperial noted that most of them met the guidelines that Imperial had set:

> "There are still a few differential reductions we wish to see in the above, but generally conditions are showing marked improvement over recent history. As can be seen from the above points, a. to e. are in agreement with our proposed differentials. All other points deviate from what the writer considers acceptable, e.g. we feel the differential on the # 2 product is fine at Dominion, Henderson and Simpson-Sears but feel the differential on the # 1 product is excessive!"
>
> (Gasoline Western, Document # 73, August 19, 1960, Imperial)[715]

Subsequently, another field report noted that the problem with the differential on "number one product" was reduced at all the unbranded jobbers (Gasoline Western, Document # 75-9).[716] The same report noted that as a result "Retail prices in Greater Winnipeg are more stable at the moment than they have been for five years" (Gasoline Western, Document # 75).[717]

Six months later, further evaluations again gauged the policy to have been a success. Because of Imperial's aggressive consignment policy, the industry had been persuaded to accept the price differential scheme established by Imperial:

> "With regard to the utilization of our consigned stock policy to meet competitive activity, it is noteworthy that the capability of I.O.L. outlets to move swiftly and effectively has permitted the establishment of a 'price differential' scheme which has been accepted by most major cut-rate outlets within the metropolitan area. This differential policy permits a margin of two cents per gallon below the level at which most major companies have established. Should these cut-rate outlets drop further than the two-cent margin, it is understood by them that Imperial will also reduce its price to match the cut-rate price, and eliminate the previous 2-cent differential. The stability of the market here during these past few months, despite some recent activity by Radio Oil and suggestions of retalitory [sic] action by Texaco, would seem to indicate that this 'differential policy' is meeting with some success."
>
> (Gasoline Western, Document # 117, January 23, 1961, Imperial)[718]

While this excerpt attributed the success of Imperial's policy to its use of consignment the effect of Imperial's communications with other firms cannot be ignored. Discussions occurred with its own independent dealers, with other dealers, and with suppliers of independents. In order to meet its objectives Imperial communicated with each of these groups. These communications served to harmonize the behaviour of the majors and to indicate to the independents the consequence of not adopting the discounts that Imperial desired to establish.

On some occasions, Imperial used its actions to convey a message to other firms. Imperial's downward price moves to establish a price differential with the independents fall in this category. Imperial felt that, by its actions in this case, it was able to obtain consensus from the industry on the differentials that would be established. This is demonstrated by the following excerpt from an Imperial document:

"1. Cut-price activity by majors and private brands; relative stability of retail price.

"Prices have been relatively stable in this market since July 6, 1960. However on Sept. 12 Henderson's Thriftway dropped the price of the # 2 gasoline from 35.9¢ to 34.9¢. This will result shortly in a price cutting situation developing through the city. Pricing has been chaotic for years in Winnipeg. *Attached is a copy of a proposal we made to Mr. G.E. Kaumeyer in July which most of the trade have accepted as workable.*"

(Gasoline Western, Document # 89, September 14, 1960, Imperial, emphasis added)[719]

Imperial also organized its attempts to restore prices in such a way as to communicate its objectives to other companies. Consider, for instance, the following excerpt from an Imperial study of events in Winnipeg during 1958. In commenting on Imperial's move to remove wholesale allowances, the excerpt noted:

"This decision was reached on the morning of Friday, July 4, and the news was purposely given to our dealers on Friday in order to 'leak' the information to other oil companies.

"We reached this decision to remove all the allowance rather than part of the allowance at a time for the following reasons. First, the market might have been in a condition where normal retail pricing could resume. Second, if this weren't the case, the various companies' moves subsequent to ours would reveal more of their thinking than if we initiated a partial removal of the allowance and they matched this action."

(Gasoline Western, Document # 580, September 8, 1958, Imperial)[720]

Imperial did not restrict itself just to indirect communications that were conveyed by its actions. While Imperial's actions alone might have been relied upon to signal its intentions, waiting for others to interpret their meaning could have involved costly delays. More direct methods served to reduce the chance of misunderstandings. The following excerpt outlines a discussion at Imperial Oil in which the merits of both direct and indirect communications were recognized. While direct agreement on prices was ruled out, discussions to establish "a spirit of cooperation" that would eliminate price competition were not:

"I might say that I had quite a discussion on philosophy of pricing with Jack and of course he has been very close to the Winnipeg situation for many years. Basically, I think he feels that while the establishment of a philosophy of pricing is essential in a retail price war, he does not agree with the contention that if you indicate to competition by your actions rather than yours [sic] words where you are going to price that you can, if you like, create leadership in the market. In other words, he thinks that while it is desirable to eliminate actual discussion with competition in the area of price, as long as you avoid actual price collusion, you should continue to express between yourselves the feeling you have about levels of pricing in an effort to create a spirit of co-operation in eliminating as far as possible sudden ill-considered moves by competition through misinterpretation of an action of any particular company."

(Gasoline Western, Document # 85, September 1, 1960, Imperial)[721]

Discussions, therefore, took place on several levels that would have served to create "a spirit of co-operation". Via discussion, Imperial ensured that dealers whom it was supplying adopted the appropriate strategy. Imperial, throughout this period, supplied two large accounts in Winnipeg — Consolidated and Polo — that were used against independents. These two 'accounts' worked closely with Imperial on pricing. In the following excerpt from an Imperial document, it is observed that both these accounts had "cooperated" at all times and, therefore, posed no threat to the major marketers:

> ". . . a cursory analysis of the market shows neither of these accounts to pose any problem for the competent major marketer. The combined gallonage of these accounts in 1961 will be 1,000,000 gallons below their 1959 totals. This is of course, exactly what we hoped to achieve when we established our policy of differentials. When you and I discussed this whole approach last June we felt the hoped for results would be evident to all. We further had no intention of putting the two into the unbranded catagory [sic]. Such a step would be suicide for everyone. This is exactly where they would be without their 1 cent differential. *These two accounts have cooperated with the writer at all times and in the face of city wide price posting Consolidated does not have a price sign of any type.*"
>
> (Gasoline Western, Document # 170-l, March 25, 1961, Imperial, emphasis added)[722]

The way in which such 'cooperation' could be obtained is illustrated by the pressure placed upon another Imperial dealer. This dealer[1]—operating an independent gasateria — noted that even when he was not on consignment Imperial set a differential for his retail price that gradually decreased from 3 cents in 1957 to 1 cent in 1959:

> "In 1957 and 1958 Imperial *permitted* me to sell three cents under the general price as we were gasaterias this produced volume.[sic] In 1959 Imperial *insisted* that I drop no further than one cent below the general price. In about April of 1960, Imperial *permitted* Consolidated Motors to sell one cent above Dominion Motors and I was *permitted* to sell two cents above Consolidated. This put me at a great disadvantage because we were gasaterias and Consolidated was a service station."[2]
>
> (Gasoline Western, Document # 271, April 26, 1961, Imperial)[724]

Two threats were apparently used by the Imperial sales representatives to induce this dealer to follow the Imperial pricing policy. First, he was told that if he cut prices, his wholesale price would go up. In effect, any reduction in the tankwagon price he was receiving while on consignment would be withdrawn unless he obeyed the suggested retail price policy. Consignment would, therefore, have served to discourage price competition. Secondly, Imperial apparently

1. The letter was written by Mr. Ignat.

2. In 1957, 1958 and 1959, Mr. Ignat was not on consignment. He purchased gasoline at tank wagon price, and "as an independent dealer established his own selling price." He did not go on consignment until February 1960 (Gasoline Western, Document # 318).[723]

promised to price him out of business — to use its 'long purse' in order to force him to abide by the majors' branded price structure. The dealer recounted these events in the following excerpt of a letter he sent to Imperial:

[37.9 handwritten addition with line drawn to 39.9 in text]

"In March of 1961 a general gas war broke out. Consolidated Motors was permitted to match Dominion Motors prices and were guaranteed by Imperial five cents a gallon gross profit in addition to a fixed sum each month irrespective of the gallonage. Imperial *insisted* however that I or my tenant Sharman sell gas at the regular retail price which was 39.9 cents per gallon. I cannot understand why Consolidated should receive such a preference when my gallonage sales were far in excess of Consolidated, we followed Imperials [sic] instructions and our gallonage dropped approximately 40,000 gallons in one months [sic] operation. It became obvious that if this continued it would break me and Sharman.[1]

"I discussed this problem with you and Elliott and you told me that if I did not continue to sell at 39.9 cents per gallon you would see to it that I was charged tank wagon prices which would mean that I would only make six tenths of a cent per gallon. In other words, I would go broke if I followed your policy and go broke if I wouldn't. I then advised you that I was going to drop prices to meet the lowest Esso price which was Consolidated (although you will recall that Consolidated gets the additional benefits and protection which I set out earlier).[2]

"Elliott came to see me Tuesday afternoon April 18th and when I told him I was serious about selling at reduced prices.[sic] He angrily made the following surprising statements to me in the presence of Sharman. He said that he has a man making a survey of company stations; the non-producers will be closed. That it was the intention of Imperial Oil to do everything to transfer the gallonage to Company stations and that within two or three years there would be no independent operators. For example he said suppose you were to get tough with us and we let you go, Imperial would buy adjoining land or across the street no matter what the cost and we would make sure that we got the gallonage. The implication was quite clear that Imperial would smash me. Elliott also stated that if I drop the prices he would make it a point to see to it that I did not get the mortgage. He also added that he was fighting with Imperial Oil money and that my money would soon be gone."

(Gasoline Western, Document # 271-2, April 26, 1961, Imperial)[727]

In order to succeed with its disciplinary strategy Imperial had also to persuade independent dealers other than its own to adopt the price differential formula. In the case of the small independent, Imperial's retail pricing policy

---

1. At the time, the station was still on consignment. It was not until April 17 that it went off consignment. At that time the owner cancelled the arrangement he had with his lessee, Mr. Sharman. Since he subsequently did not sign a consignment agreement with Imperial, Imperial noted that "he was entitled to price the product as he saw fit" (Gasoline Western, Document # 319).[725]

2. According to an internal Imperial Oil letter, Mr. Ignat did indeed drop his prices. In the same letter, it was noted that Mr. Ignat's wholesale price would go up as he would be off consignment (Gasoline Western, Document # 319-20).[726]

may have been sufficient to force these dealers to adopt the formula; but, in the case of the larger independents, Imperial felt its actions needed to be explained to this sector in order to convince it to adopt or to maintain the appropriate price differentials. The following excerpt outlines the strategy that was recommended:

"There still remains [sic] several things to do if the Price Differential Formula as outlined in my letter of July 27, 1960 [excerpted above] is to be tested as a workable philosophy.

a. Anglo-American in Calgary must be made aware of the philosophy insofar as they are concerned in Winnipeg. This in fact means their two stations on the North Main by the North Main Drive-In must raise their prices by one penny on each product. They must also do this at their station on Archibal and Provencher only here, their # 1 product must be raised by 2 cents. Unless they are prepared to do this we should not allow them any differential at all as per our differential approach.

b. Husky in Calgary must also be made aware of the differential philosophy.

c. Radio Oils have now had a two cent advantage in differential for a period of two months. This is contrary to policy. The competition are not prepared to accept this too much longer. Suggest Mr. Hector be made aware of the current facts of life.

d. Dominion Motors and Henderson must reduce their price differential on the # 1 gasoline. The writer will look after this if some of the above items are attended to.

e. We must be very firm in any discussions with the competition as to our philosophy. Certainly point f, page one, of my letter 7/27/60 is valid in my mind. [point f is as follows: "any major who supplies an unbranded outlet must consider the gallons sold to that branded outlet as part of his share of a price differential market.]"

(Gasoline Western, Document # 68")[728]

Another document that suggests the nature of Imperial's actions is excerpted below:

"Finally I feel that if there is to be another round of a price war let's be the ones who start it in defence of a principal [sic]. However, I believe if we all work at it a war can really be avoided because continuing price wars locally are not inevitable. They have existed in part because we as a company have not had any clear cut idea of what we believed or wanted and if we did we were too slow to take action. We are at a point locally when we must accept the differential system as our philosophy and fight to protect it or disavow it. There is no inbetween for us now! Certainly the trade will refuse to accept us seriously in the future if we are anything less than positive, in our acceptance or rejection of differentials.

"P.S. Would it be possible for you personally, to discuss differentials with Anglo and Husky? I hope it will be possible."

(Gasoline Western, Document # 80-1, August 27, 1960, Imperial)[729]

The request to discuss these matters with other companies was accepted. Contacts were established between Imperial and Anglo in Calgary as the following Imperial document demonstrates:

> "After our telephone conversation the other day I discussed with Jack Nunn your feeling regarding the Winnipeg retail price market and suggested to him that he might contact Anglo and give them the benefit of our feeling at this time.
>
> "As you are probably aware, Anglo's operation in Winnipeg is directed by their Calgary Office and it appears in this instance and instances in the past that Calgary has little knowledge at times of what is going on in Winnipeg. Anglo's Calgary representative was quite surprised, or at least indicated surprise, that the three accounts you mentioned were pricing at two cents below majors and assured Jack Nunn that he would develop with his Winnipeg people. We do not expect to be advised of the outcome of this discussion but at least something has been done in an effort to correct the situation which you feel might again trigger price trouble in Winnipeg."
>
> (Gasoline Western, Document # 85, September 1, 1960, Imperial)[730]

These types of discussions continued throughout the nineteen sixties. The following excerpt indicates that the same Imperial official who discussed the Winnipeg pricing situation with Anglo-American also put pressure on Shell, Husky and a wholesaler (Tidewater) to influence the price of Dominion Motors in Winnipeg. A Tidewater official recounted a discussion held with an Imperial official concerning the Winnipeg market and the threat Imperial made to it:

> "*I was speaking to Jack Nunn, at Imperial in Edmonton, and he was aware of our selling gasoline to Dominion and as I understand it, he has put the pressure on Shell in Winnipeg to ask Husky to stop selling to Dominion.*[1] I can't tell at this point just what will happen, we went into a long discussion on the gasoline market in Winnipeg and I think we came out ahead. . . .
>
> "I believe it will continue as long as Doug Everett follows our suggestions as to selling price. He has agreed to do this as he has done in the past. With this in mind I have no second thought about resuming gasoline deliveries."
>
> (Gasoline Winnipeg II, Document # 60, July 12, 1965, Tidewater (Veedol Oil Co.) emphasis added)[731]

The third sector of the industry with which Imperial held discussions consisted of other majors like itself. Examples exist to show that the companies carefully informed one another of the actions that were being taken in local submarkets so as to ensure that these were not misinterpreted. The purpose of these inter-firm discussions was to provide each major with the assurance that the prevailing price level had not been violated by the major but by a 'maverick' dealer. It was in this way that the trust that is necessary to achieve a harmonization of policies was achieved.

---

1. Since Tidewater was receiving its product from Husky and reselling to Dominion amongst others Tidewater was being threatened with a cut-off of product by Imperial.

In the following example, Imperial and B.A. (Gulf) managers are shown to have consulted in order to assure one another that the decrease in the price at a Gulf station was not initiated by Gulf itself. These events were recounted by an Imperial official:

> "On January 3rd we were informed that B.A. at Minto had reduced the retail price of gasoline from an established 43.7¢ and 48.7¢ to 38.0¢ and 43.0¢ per gallon. We immediately endeavoured to get in touch with the local B.A. district manager but were advised that he was out of town and would not be back until Friday. We then telephoned Mr. U.G. Boyd and explained the above situation and it was decided that we should endeavour to ascertain whether the B.A. dealer was receiving the regular 6¢ commission or whether this price reduction was coming out of his own pocket. . . .
>
> "On January 5th Mr. Boyd telephoned us to advise us that he had been in touch with Mr. Carey of B.A. who pleaded ignorance of this situation but stated that he would follow with the B.A. district manager for more information.
>
> "On January 6th we were successful in contacting the local B.A. district manager, who advised us that B.A. were definitely not subsidizing this dealer and that they were unaware of the situation but would follow and advise us. . . .
>
> "On the afternoon of January 6th the B.A. district manager phoned and advised that they were successful in getting this dealer to increase his prices to 42.1¢ and 47.1¢ per gallon, . . . "
>
> (Gasoline Western, Document # 108, January 6, 1961, Imperial)[732]

These communications between majors provided assurance that one of the companies themselves was not reducing prices and that steps would be taken to have individual dealers return prices to levels that were apparently mutually acceptable.

This was not the only evidence of detailed discussions on prices. The following excerpt from an Imperial document summarizes conversations held between Imperial and several other companies — two independents and Gulf:

> "H. Everett [Dominion Motors — an Independent] called me after talking to W. Henderson [Henderson Thriftway — an Independent]. Seems they are both interested in getting the price up a penny.
>
> "J. Carey [B.A.] called claiming Texaco were going to post price signs. Texaco claimed that because they are holding price because of subsidy they are bound to display price according to their legal dept. We have nothing on this.
>
> "I advised A.E. Elliott.
>
> "Spoke to Carey re Minto price. He claims no knowledge of situation but promised to contact Brandon and let me know."
>
> (Gasoline Western, Document # 109, Undated, Imperial)[733]

Conversations were also held between Imperial and Texaco. The following excerpt recounts discussions that were held about discounting near Brandon, Manitoba:

> "Since dictating the first portion of this letter, we have been successful in contacting the local Texaco agent, who advised that they were definitely not supporting their account, although the Camp Commander had called and asked for such support, and that he had communicated the fact that their account was meeting Brandon prices to his Winnipeg office who were to get in touch with North Star Oil and yourself to determine what could be done."
>
> (Gasoline Western, Document # 114, January 16, 1961, Imperial)[734]

Another example of communications aimed at maintaining price levels is provided by the following document. It recounts discussions held between Imperial and North Star in an attempt to stabilize an outbreak of competition in the Brandon area:

> "On January 6th, a further telephone call was received from our Rivers agent advising us that a North Star dealer (Decker & Sons) had just dropped his price to meet Brandon retail prices and had posted a sign advertising this fact. We immediately contacted the Brandon North Star Oil representative who advised that he did not cover the Rivers area, however he indicated that North Star Oil were not subsidizing this dealer and that he would convey this information to the North Star representative in Neepawa with a view to getting the North Star dealer in Rivers to raise his prices.
>
> "On January 7th, the writer received a telephone call from the local Canadian Oil Company representative, who also have an outlet in Rivers, expressing concern over the action of the North Star dealer and wondering what we were going to do. We explained that we were going to give North Star Oil a few days in which to get their dealer to raise his prices.
>
> "On January 9th, we contacted you and explained the situation and you further advised that after a discussion with North Star Oil management in Winnipeg, that North Star Oil were definitely not subsidizing this dealer and that they were endeavouring to get him to raise his prices.
>
> "On January 10th we were successful in contacting a Mr. Tom Woods, the North Star Oil representative at Neepawa, who confirmed that they were not subsidizing the Rivers dealer, that they were very concerned about his pricing situation and that they would do everything possible to get him to return to a normal Rivers price situation."
>
> (Gasoline Western, Document # 160, January 11, 1961, Imperial)[735]

In summary, the events in Manitoba show how the leading firm — Imperial — was able to restrict the spread of competition from the independent sector. On the one hand, it took the lead in adopting a pricing policy that was meant to reduce unbranded sales, increase their costs and eventually 'establish a realistic retail price on gasoline that everyone can enjoy a profit on'. On the other hand, it engaged in discussions that served to ensure that other companies would abide by the rules of the game — the limited price differentials that would be maintained between the majors and the independents. In the course of leading the industry to maintain the price structure, Imperial deliberately employed a pricing policy that was predatory both in intent and effect.

Winnipeg was not the only area where Imperial adopted an aggressive predatory policy in order to prevent the independents from pricing at levels commensurate with their superior efficiency and lower cost structure. Competition had developed as early as 1957 in Vancouver and there, too, Imperial evolved a policy to counter the independents and to raise their retail prices. An Imperial policy document prepared at the time stated:

> "*Proposal*
>
> To enter the present price cut market in the Whalley Area at both Totem and our new outlet at Trans Canada and Beckstrom which will be ready to open on September 15th. To sell branded products at 6¢ off the regular retail price.
>
> "*Objective*
>
> To have the present Cut price outlets in the subject area revert to regular retail prices for the area."
>
> (Gasoline Western, Document # 1454, September 9, 1957, Imperial)[736]

In Vancouver, as in Winnipeg, Imperial managed to get other majors to support its pricing moves so as to increase the pressure that would be placed on the independents. The Vancouver Sales Manager, in referring to a price competitive situation noted that Imperial had "managed to draw B.A. [Gulf] and Home into the situation" (Gasoline Western, Document # 1461).[737]

The intent of Imperial in Vancouver was the same as in Winnipeg; only a limited discount was to be allowed the independents and their prices were to be forced upwards. The Vancouver Sales Manager outlined Imperial's policy in a memorandum:

> "We should underline that the only reason for going into the area on a price-cut programme will be for the express purpose of making an attempt to return gasoline marketing to a more normal basis. It is unlikely that Henderson will be knocked out completely but if he operated on a cut price basis at around 3¢ off our dealers could quite likely live with the situation."
>
> (Gasoline Western, Document # 1471, November 22, 1957, Imperial)[738]

As was done elsewhere, Imperial used communications to help stabilize the market. For instance, it discussed the differential it would allow and elicited promises from the discounter as to the price the latter would charge. The following excerpt recounts one such event in 1959 with regard to a large independent — Henderson's Thriftway. An Imperial official reported:

> "On information received from Mr. Bob Van de Kerkhoven, who, as you know, is Manager for Henderson's Thriftway, agreement was reached whereby Henderson's Thriftway would raise their cut-price sign to 36.9¢ if the major discounters in the area would return to the accepted posted price, which was agreed would be 39.9¢ per gallon for Regular Grade gasoline."
>
> (Gasoline Western, Document # 1479, February 4, 1959, Imperial)[739]

When agreement could not be reached with the unbrandeds, Imperial continued to engage in disciplinary policies. The following is taken from a proposal made by the Vancouver office to Toronto on a disciplinary programme proposed in mid-1959:

> "It would be our plan to put all units listed on a commission basis, set the price on the basis of meeting the immediate retail price in the block and follow the competitor down if he initiates further price cuts. *The one point that we need to make here is the importance of staying with the plan for as long as the competition makes it necessary.* In other words, if he moves down, we move down. If he moves up, we do the same thing. In this manner our policy will be to meet the competition and not to lead the market down.
>
> . . .
>
> "We must be prepared to make rapid downward adjustments in the posted retail prices and to add units in the rings around the core locations depending on how competition develops."
>
> (Gasoline Western, Document # 1485-7, May 25, 1959, Imperial)[740]

This is just the pricing policy that was outlined in the Shell section — a meeting of the independents' price, following them down if they tried to re-establish a differential, and 'feathering' other stations at a distance from the independents. The difference is that the Shell evidence related to this company's policies in the late nineteen sixties; Imperial had adopted this technique in the late nineteen fifties.

Imperial's policy of containing the unbrandeds continued and so did discussions with other companies. The following excerpt outlines a conversation between Imperial and one of the largest independents in Vancouver regarding the arrangement the local industry had reached on the price differentials that would be allowed the independent sector:

> "During my conversation with Mr. Van Dreal, he stated that he and Mr. Singlehurst had met with a representative of Richfield Oil Company on September 16th and had obtained a new lower gasoline price.
>
> "Mr. Van Dreal also intimated that he had been in contact with the Standard, Texaco and Shell Oil companies and had received an indication from them that they would be willing to accept a 2¢ differential in the retail selling price. He also stated that he had personally contacted Mr. Woodward of Woodward Stores and stated that Mr. Woodward would be agreeable to a 2¢ differential in the retail selling price."
>
> (Gasoline Western, Document # 1515, September 17, 1959, Imperial)[741]

This communication took place just after the independents had dropped all sign postings and indicated they would await a new posting by the majors. As this document indicates, the size of the discounts to be allowed the independents was the subject of discussions during this period.

The differential of some 2 cents per gallon mentioned above was apparently implemented. By early 1960, Imperial indicated that this was generally the differential it would allow in Vancouver. Imperial's retail price policy was:

"1. Maintain general level for Greater Vancouver — 35.9¢ 40.9¢

2. No further price action against unbranded competitor selling within 2¢ of 35.9 40.9

3. Where unbranded selling below 2¢ spread match on local basis as required. This action to be confined to regular grade.

4. Avoid matching action versus Vancouver Motors pro tem.

5. Matching action versus Woodwards & Simpson Sears to be assessed separately.

. . ."

(Gasoline Western, Document # 1533, January 26, 1960, Imperial)[742]

By late 1960, Imperial assessed its policy as having had a substantial effect. Its policy had succeeded in severely 'pinching' the small unbranded by diluting the volume at these stations — exactly the objective set for the policy back in 1957. An Imperial assessment stated:

"Looking back over their period of growth we note that the average per station [unbranded], which was 400,000 per station in 1957, has now been reduced to 326,000 in 1960. Insofar as Woodwards, Simpsons-Sears and Henderson are operating between 600,000 and 1,200,000 per outlet it thus seems very definite that the small unbranded has been severely pinched over this period of time."

(Gasoline Western, Document # 1540, August 26, 1960, Imperial)[743]

A second Imperial evaluation done six months later reaffirmed the success of its policy. Apart from large unbranded outlets and the department stores, the independents had been 'contained'. Moreover Imperial directly attributed this to its own consignment programme:

"Further comparison of volumes sold through Private Branders in 1960 versus 1959 shows that sales through the Department Store outlets have increased while sales through the remaining Private Brand outlets have decreased. The average Private Brand station volume (excluding Department Stores but including Hendersons) has decreased from 330,000 gallons per outlet in December, 1959 to 251,000 gallons per outlet in December, 1960. The average Private Brand station volume (excluding Department Stores and Hendersons) has decreased from 268,000 gallons per outlet in December, 1959 to 225,000 gallons per outlet in December, 1960. Generally Private Brand outlets do not enjoy the same volumes today that they did when our price war problems originated and we believe one of the main reasons for this is our present competitive consignment program.

. . .

"In view of the foregoing information, we believe we have made favorable progress in containing Private Brand potential during 1960."

(Gasoline Western, Document # 1555-7, January 24, 1961, Imperial)[744]

Imperial had not, however, achieved all of its objectives. Its evaluations recognized that the large volume dealers still offered a threat. As the following excerpt outlines, Imperial proposed to deal with this sector by pressuring its suppliers:

> "To sum up, it would appear to us that the department stores and Henderson are the greatest individual producers of unbranded volume, with the department stores having by far the brightest future. It would also appear that the small unbranded is definitely feeling the pinch and is well contained at the present moment. The problem would therefore appear to be some measure of attack at the department stores and the Stellarene chain and from short analysis it would appear that the best attack must be through the supplying oil companies, probably by means of reduced profits."
>
> (Gasoline Western, Document # 1542, August 26, 1960, Imperial)[745]

Imperial, therefore, turned its attention to the larger operators intending to pressure them through their supplying companies.

There were several key independents against whom the majors concentrated their predatory activities. The following excerpt from a Royalite document indicates that price increases by Vancouver Motors and Henderson were felt to be essential if a general price increase was to occur:

> "The increase in B.C. tax is effective March 31, 1961 and has tended to complicate any increase in retail prices. Vancouver prices may start to move up shortly. Everyone appears ready to move if Vancouver Motors and Henderson go up."
>
> (Gasoline Western, Document # 1091, February 20, 1961, Royalite)[746]

The key position of these companies is also emphasized in the following excerpt from a Royalite document. In it, Royalite observed that Imperial took aim at one of the largest independents — Henderson — in order to force this dealer to post a price differential with the majors' brands of less than 3 cents per gallon:

> "Prices are again down in Vancouver. I.O. don't want Henderson to have a three cent spread."
>
> (Gasoline Western, Document # 1076, June 6, 1961, Royalite)[747]

Imperial documents confirm that it would not accept the 3 cent differential. The following excerpt from an Imperial document commented on the pricing policy of another independent — Dominion — in April, 1961:

> "Dominion Motors have in effect a three penny differential with our C.O.S.S. We cannot live with this differential."
>
> (Gasoline Western, Document # 186, April 2, 1961, Imperial)[748]

Because of the critical position of an independent like Henderson, the experience of this firm serves to illustrate the manner by which other firms squeezed it and than sought to move its prices upwards. It also demonstrates that the attack on independents such as Henderson came through their supplying companies — as Imperial had indicated was necessary.

Evidence from Henderson[1] outlines the course of the actions taken against it, the threats and inducements made, and the agreements that were reached. In 1960, Imperial decided to pressure the large independents by cutting prices opposite stations owned by companies which wholesaled to the independents. Henderson noted this was the reason that he was forced to adopt a 2 cent per gallon differential in that year.

> "1960 — Before going to 2¢ differential. Anglo Canadian being our suppliers & Anglo being a subsidiary of B.A. — Much Pressure must have been exerted on them to get our Prices up from the other oil companies. Prices being cut in Anglo Area now seemingly to force them to discontinue selling us or get our Prices up"
>
> (Gasoline Western, Document # 1595, Undated, Henderson Thriftway Petroleum)[749]

The pressure that was placed on Henderson was also accompanied by direct communications and ultimately an agreement was reached between the "major oil companies" and Henderson on the prices to be charged:

> "Resultant from a number of meetings held during the Summer of 1960 between officials of the major oil companies and HTP, it was finally agreed, as of September 26th, 1960, that HTP SELF-SERV would sell their gasoline at a 2 cent differential."
>
> (Gasoline Western, Document # 1597, 1961, Henderson Thriftway Petroleum)[750]

During this first episode, the two major companies that discussed prices with Mr. Henderson were B.A.(Gulf) and Henderson's supplier (Anglo-Canadian Oil). Mr. Henderson recounted the pressures placed on him in the Winnipeg market:

> "During the period of 1959-1960, gasoline prices in Winnipeg were up and down, Thriftway trying to maintain a 3¢ differential below the Majors. This being hopeless in our 'fenced' area as North Star and some others matched our prices.
>
> "During early 1960 and in the Summer, Mr. Vern McKinnon, BA Oil, called on us at our office a number of times; also Mr. Jack Carey, Sales Manager of BA. Mr. Wiley was present at these discussions. They discussed stabilizing the gas prices, etc. That is, we, Thriftway, would work on a Non-brand 2¢ differential below the Majors. Prices would go up slowly, possibly ending at 40 or 42 cents a gallon for Regular. We would post 2¢ under Majors. Dominion Motors, they thought, would go along with this setup of a 2¢ differential for Non-brand.
>
> "They advised us that their company would not go for a 3¢ differential for Self-serv, nor did they think the other companies would.
>
> "Sometime towards the end of August or first part of September, 1960, Mr. Carey, our supplier, Vice-President of Anglo-Canadian Oil telephoned me to see if I would meet him at the Fort Garry Hotel for dinner with Mr. Jack Carey, Sales Manager of BA Oil.

1. Henderson operated in both Vancouver and Winnipeg. Therefore this pressure served to affect both markets.

"We discussed the 2¢ proposed gasoline differential for Non-brand. I was informed by BA that they would not go for the 3¢ differential for Self-serv.

"After a long discussion I said it looks as if we have no alternative but to go to the 2¢ differential, or we would be out of business. I would advise them what we would do later.

"Price differential commenced September 26, 1960 — until March 31st."

(Gasoline Western, Document # 1598, Undated, Henderson Thriftway Petroleum)[751]

Evidence has already been presented to show that similar pressure exerted by Imperial on Shell, Husky and Veedol was used to influence another independent in this same market — Dominion Motors. Therefore a consistent pattern of disciplinary behaviour is revealed.

In the following year, discussions continued between Henderson and the majors. The price differential forced on Henderson, as Imperial recognized, injured his business. An excerpt from a 1960 Imperial document noted:

"Henderson's volume has been reduced considerably because this outlet's price policy has not been as aggressive during the past few months. This action may be the result of pressure from their supplier."

(Gasoline Western, Document # 1534, June 3, 1960, Imperial)[752]

As a result, Henderson pushed for a 3 cent rather than the 2 cent per gallon spread he was being allowed. He was visited by a Gulf representative (Mr. Carey) who informed him that the 3 cent differential was unacceptable to "the oil companies":

"C. Carey called on us at 1.30 P.M. Wiley and Henderson present.

"He discussed the price differential that BA had suggested at 2¢ off and that Dominion and HTP would be the only ones to post price signs. The Majors would take their signs down. Thriftway was to post to 24.9; Majors to 26.9. Then the prices would come down around us if this 2¢ differential was not accepted.

"We told him that we couldn't go for the 2¢ differential as past experience has been better. We gave him a counter proposal that we would be willing to take down our price signs the same as the Majors and just advertise Self-Serve; and would be 3¢ off.

"Mr. Carey said that he didn't think the oil companies would go for it but would suggest it and advise us this afternoon. He stated that he thought we were wrong and prices would fall.

"We did not hear from Mr. Carey as he said he would do.

"That evening at approximately 5.00 P.M. all Majors in the fenced area had dropped down to our price of 22.9."

(Gasoline Western, Document # 1601, April 21, 1961, Henderson Thriftway Petroleum)[753]

After a period of being disciplined, Henderson once again received a visit from a Gulf representative asking him to raise his price and to take only a 2 cent differential. Henderson stated his position:

"This we declined to do, stating that their [sic] should be a 3¢ spread for Self-Serve.

"Carey stated that he did not think the other companies would agree with this. His company was definitely against 3¢. He stated we had to post to 38.9 or the Majors would meet us and price war would be all over Winnipeg."

(Gasoline Western, Document # 1599, April 20, 1961, Henderson Thriftway Petroleum)[754]

Communications continued with Henderson about his pricing policy in both Winnipeg and Vancouver as the following document indicates:

"Before this meeting Mr. Anderson, Vice President of Royalite had telephoned me that a Mr. Meyers and Mr. Young would be in Winnipeg on the 7th and would I see them. I said that I would. Mr. Meyers called me around 2.30 P.M. He was registered at the Fort Garry where I arranged to meet him with our Mr. Wiley.

"We discussed the price war in Vancouver as well as the Winnipeg war. He wanted to know why we had dropped our price in Vancouver to 35.9 sometime in May. I said we had dropped because our gallonage was dropping off and that we could not expect our customers to support us at a 2¢ difference below the Majors and the non-brand selling the same price as us. I said that the customers could go down the street to one of the non-brand conventional stations and get his gas for the same price as ours for credit and be served the same as at a major brand conventional outlet.

"He read from a report on the price war in Vancouver that we had been the first to drop and other non-brands, conventional stations, Simpson Sears and Woodwards had followed. Report ended that everything would have been all right if Henderson had not dropped. Also re price drop Vancouver, stated Majors had posted to 37.9 all over valley, etc., 2¢ above us. I.O. would not let Department Stores post lower than 1¢.

"Meyers stated that I could live for 150 years before we would be allowed to sell for 3¢ below them or the Majors. I asked him if that was also the opinion of the Imperial Oil and quoted my conversation with them sometime in January, a Mr. Elliot, who said that they figured their Self-serve station Polo Park was entitled to 1¢ off on account of self-serve, to which I agreed with Elliot. He said he did not know anything about that but knew that the Imperial would not let us sell lower than 2¢ a gallon below them, the same as themselves and the other majors.

"Meyers said why not go up to the 2¢ below the majors so as we could all make some money. . . .

"Meyers said he had a proposition to make to us which was that they would supply us with gas on a consignment basis whereas a proper price spread under the tank wagon price possibly 4 or 5¢ off would be allowed. But they would have to post our selling price which would be 2¢ below majors' branded gas and that they would not be interested unless a deal like this was made under contract. Also it would have to be taken up with the Imperial Oil before going ahead with it and have their OK on it which would be no problem."

(Gasoline Western, Document 1603, June 7, 1961, Henderson Thriftway Petroleum)[755]

The last sentence demonstrates Imperial's critical role in the process. Indeed, as the period of disciplinary pricing continued, Henderson asked for a meeting with an Imperial representative and this was arranged by Royalite (Gasoline Western, Document # 1607).[756] Henderson recounts that Imperial reaffirmed the majors' position:

> "Cormier [Imperial] called on me with one of his salesmen, Mr. McMillan. I wished to discuss with him their stand on the present gas war. . . .I asked him what their stand was on the 3¢ differential that we had asked for on Self-serve. He said he could not speak for the other companies but his company would only go for the 2¢ proposed differential. I mentioned my conversation with him and also with Mr. Elliott re their 1¢ differential that they had posted at their Polo Park station in which I had agreed with them and said that B.A. did not agree. He said that this was correct but all they could go for our Self-serve was a 2¢ spread or spread [sic]."
>
> (Gasoline Western, Document # 1609, June 9, 1961, Henderson Thriftway Petroleum)[757]

In summary, Imperial's use of consignment practices both in the Winnipeg and Vancouver markets validates the general observations of the other majors on Imperial's predatory intent and objectives. Imperial used its consignment programme in order to discipline the independent sector. Its intent was to eliminate some dealers and to force the others to raise their prices. Both through implicit and explicit signals, independent dealers were informed that they had to adopt a price differential acceptable to the majors. Because of the degree of communication revealed, it is clear that the majors forced those independents who remained to increase prices and to restrict competition. As a result of actions taken against independents as exemplified by the events in Vancouver and Winnipeg, the majors were able to return their margins by the mid to late nineteen sixties to high levels in most urban markets across Canada.

(c) *Imperial's Second Brand Strategy to Restrain the Independents*

Imperial, in the late nineteen fifties and early nineteen sixties, had chosen to subsidize its branded prices to counter the independent marketers. By dropping these prices to levels below costs for several years, Imperial checked the growth of the independent segment and re-established high branded prices in the late nineteen sixties. However, the method of disciplining price competition by cutting prices across the board had proven to be expensive. As branded prices were increased in the late nineteen sixties, Imperial chose to control the independent sector by developing a tool that was far more selective. Imperial, like Shell, established an extensive second brand strategy that was aimed at segmenting the market for gasoline into several distinct groups according to the price charged.

Imperial, like Shell, classified the market into three tiers for planning purposes (Document # 119933).[758] The first tier was the highest priced market — characterized by a "full service" high cost product such as was provided

by the Esso brand (Document # 119933).[759] At the second level[1] were those marketers who Imperial referred to as "special deal", or "bonus", or "clean discount" operators — such companies as Canadian Tire, Woodwards, Eatons, Arrow, and Spur (Documents # 118887, 119763).[761, 762] Finally, Imperial noted that there was a third level of discounters whose price was the lowest in the market — the "deep discounters". Firms such as XL, Martin, Calex, Suny's and Turbo fell into this class (Document # 118887).[763]

Imperial's initial strategy depended heavily upon the development of several types of private brand stations. It established one such operation with prices halfway between the major brand and the lowest priced discount brand. The Econo operation in Ontario was characteristic of Imperial's second brand approach in this area — though Imperial used additional names, such as Relais in Quebec (Document # 72354).[764] Imperial tended to establish this type of operation where discounting existed (R.G. Reid, Toronto Hearings, 1975).[765] It was meant "to attract the coupon/discount segment in urban markets" (Document # 118407).[766] At the bottom of the price segment, Imperial established what it referred to as third brand stations. These consisted either of a network such as Gain or single stations with nothing more than a simple designation such as 'Gas'. The Gain stations, Imperial's President testified, were considered for use where discounting had been chronic (R.G. Reid, Toronto Hearings, 1975).[767] In Quebec, Imperial converted some "Champlain outlets to prices at the bottom of the market" (Document # 11591).[768] Evidence indicates that both the second and the third brand stations were aimed directly at the independents. For example, the marketing department indicated that it designed the transformation of certain unprofitable Esso full service stations to "outlets which will be designated simply by the word 'Gas' and which will be priced with the lowest private brand competitor in the area"[2] (Document # 93136).[769]

The following public relations document prepared by Imperial for presentation to the Ontario government summarizes the manner by which Imperial attempted to segment the gasoline market:

> "Imperial's analysis of the gasoline market indicates that it is formed of at least three segments. First, there is the 'full service' segment in which the consumer is looking for quality, service, convenience — the full package of extras. Imperial's Esso brand will compete in this segment. Secondly, there is the 'special deal' or 'bonus' segment in which the consumer is looking for a lower price on gasoline plus coupons on merchandise or a car wash at reduced prices. Imperial's Econo brand will compete

---

1. Imperial recognized that there were some differences in pricing policy among firms in this segment. Some priced with the majors but discounted using bonus payments; some used both cash discounts and bonus coupons; others just discounted but generally projected a good image and provided good service (Document # IGDS 675).[760]

2. Shell's comments on Imperial's actions confirm that this policy was implemented.

in this segment with discounted gasoline and coupons on convenience merchandise. Thirdly, there is the 'discount' or 'deep discount' segment in which the consumer is looking for the lowest price possible and is not concerned about anything else. Imperial is currently designing a third brand of gasoline called Gain, which will compete in the discount segment on the basis of price only."

(Document # 119933, Undated, Imperial)[770]

There are two interpretations of Imperial's actions. On the one hand, it might be argued that Imperial was merely recognizing that different submarkets existed, each with differing demands for services, cost levels and, therefore, different prices. There is little doubt that the demands of consumers are not homogeneous; but this fact alone does not resolve the issue as to whether Imperial's actions properly served the competitive process or whether they were intended to interfere with it. For a programme of market segmentation could also be interpreted as an attempt to develop an optimal price discrimination scheme — to extract high prices from at least one sector of the market.

Ascertaining which of these explanations is correct may be done either by evaluating the extent to which markets were naturally separate or whether the majors were attempting to enforce an artificial separation through the disciplinary use of second brands. The issue is not just whether groups of consumers differed by tastes but whether variances in tastes would have led to product offerings that differed by the extent observed if competition had not been hindered by the various disciplinary practices of the majors.

Certainly the natural division of markets on a geographic basis was questioned by the majors themselves. Evidence cited from the other majors indicates that price reductions in one geographic market quickly spread to another. Imperial also recognized this fact. In a 1965 study of the Ontario Gasoline Market, Imperial stated:

"Whenever price instability appears, it has a tendency to spread rapidly as prices at an individual service station impinge on the sales of adjacent dealers."

(Document # 118996, May, 1965, Imperial)[771]

This concept of a unified market — as the area over which prices tended to respond one to another — was not confined to urban locations. Imperial recognized that price erosion had a tendency to spread from one city to another. For example, in 1970 Imperial's Ottawa sales manager requested a drop in Ottawa pump prices (Document # 123068).[772] However, this created a problem, for a difference between Ottawa and Hull was not tolerable, since a decrease in the Hull price would likely "leap-frog" to Montreal. An Imperial official outlined the problem:

"Our sales position indicates to me, we should not lower prices, as it will leap-frog into Montreal. It would be desirable to make our attitude known to Central Office, as it is unrealistic to have distortion of prices between Ottawa and Hull."

(Document # 123067, September 30, 1970, Imperial)[773]

Similarly, in planning its Ontario strategy, Imperial recognized that once prices were reduced in urban areas, the impact would be felt across all of southern Ontario:

> "In designing the Ontario price strategy, it is planned that the impact will be directed at urban and suburban markets, and at the immediate fringe areas where, in so many parts of Ontario are located the 'cheap discount' retail gasoline outlets. . . .
>
> "When implementing price reductions, it will be necessary to carefully examine each market to ensure that prices are not reduced unnecessarily. *Despite such precautions, it will be virtually impossible in the southern areas of the province to prevent the spreading of the price once it is implemented in the major urban areas.*"
>
> (Document # 178166, February 10, 1972, Imperial, emphasis added)[774]

While this suggests that natural separation of markets in a geographical sense was slight, there is also evidence that there was substantially less preference for service and brand names than the majors were trying to establish. In 1965, an executive of Imperial noted that it was apparent that the brand was worth little more than one cent per gallon.

> "It used to be considered — and this is sort of rule of thumb just from experience — that a major brander could live reasonably comfortably alongside a private brander who was charging two cents less. However, because of these volatile price war situations the motorist has, in most places, become much more conscious of price than he used to be, and most major brand operators today don't feel comfortable if they are more than one cent above someone of this kind."
>
> (Document # 135380, June 1, 1966, Imperial)[775]

Some six years later, a similar position was taken during the preparation of Imperial's Ontario strategy. As was the case with other majors, Imperial set a value on the brand of no more than 2-3 cents per gallon:

> "AT DIFFERENTIALS OF 2¢-3¢, THE UNBRANDED COMPANY'S SALES WILL GENERALLY REFLECT NORMAL MARKET GROWTH.
>
> ABOVE 3¢ THEY WILL COMMENCE TO TAKE VOLUME FROM THE OUTLETS OF NEARBY MAJORS.
>
> AT 7¢-10¢ THEY WILL ENJOY ABNORMAL GROWTH."
>
> (Document # 178014, Undated, Imperial)[776]

Yet, Imperial, in the late nineteen sixties and coincident with the establishment of its second brand strategy, moved branded/unbranded price differentials to an average of some 8 cents per gallon in both Quebec and Ontario. In light of Imperial's own evaluation of the differences in prices at which customers would switch from the brand, this action would not have been sustainable — unless Imperial and others used predatory practices to exploit the market power that they possessed as a group to enforce their price discrimination scheme.

Since price discrimination was, therefore, the more plausible explanation of Imperial's behaviour, the validity of this explanation requires examination. Inherent in any price discrimination scheme is the notion of a restriction on supply. Evidence that Imperial intended to prevent the various segments from reaching a market-determined equilibrium of prices and quantities would substantiate the claim that its second brand strategy was anti-competitive. Evidence of this intent would be provided if it could be shown that Imperial essentially used its second and third brand networks as 'fighting brands', if they were predatory in nature and aimed at increasing prices, or if Imperial admitted they were a temporary strategy and not intended to fill, in any long run sense, the needs of the group of consumers which Imperial might have originally claimed were to be served.

It is clear that the implementation of the second brand strategy was accompanied by a gradual increase in the wholesale/retail margins of the brand. That Imperial should have begun this upward movement by simultaneously implementing an aggressive second brand strategy is suggestive of its true intent. That it should also have initiated this process with a squeeze by simultaneously increasing wholesale prices and implementing a subsidy for its brand indicates it was not devoid of predatory purpose.[1] The fact that both policies were implemented in the same time period is significant.

The second body of evidence that Imperial's policies were aimed at hindering the competitive evolution of the market comes from other firms in the industry. The other majors were careful to evaluate the behaviour of the leader because they tended to pattern their strategies after it. These companies noted that the strategy of both Imperial and Shell was to avoid general price competition with the independents. For instance, Texaco recounted the fact that Imperial's branded prices did not respond to independents' prices during this period:

> "It would appear that Imperial do not intend to compete in price at branded outlets . . . ."
>
> (Document # 58391, June 14, 1971, Texaco)[777]

> ". . . Imperial and Shell have apparently adopted the following marketing strategy:
>
> (1.) Maintaining a high posted dealer tank wagon price for branded locations, and thereby allowing a retail price differential of up to $0.13 per gallon over competing unbranded locations."
>
> (Document # 8786, April 7, 1972, Texaco)[778]

> "Major brands, notably SHELL and IMPERIAL, are apparently reluctant to meet this [unbranded] price competition on a direct branded basis, ..."
>
> (Document # 58384, June 28, 1972, Texaco)[779]

---

1. See the earlier section on Texaco (pp. 244-99 *passim*) for a discussion of this episode.

Instead, as Texaco explained, Imperial, like Shell, used private brands to meet the price competition of the unbrandeds:

"Major brands, notably SHELL and IMPERIAL, are apparently reluctant to meet this price competition on a direct branded basis, and have chosen to retain their share of the market by: —

(a) Establishing their own private brand outlets.

(b) Rapidly expanding car wash and self-serve facilities, both of which have the effect of perceivably reducing the retail price of gasoline."

(Document # 58384, June 28, 1972, Texaco)[780]

"Imperial are building and opening 'Econo' type outlets at an accelerating rate. Shell are continuing to debrand their branded outlets, opening them under various trade names, the major one being their wholly owned 'Beaver' subsidiary.

"Shell and Esso, and to a lesser degree Gulf and BP, are continuing to build and open car wash facilities."

(Document # 53618, August 15, 1972, Texaco)[781]

Gulf described the same development of second brand stations by Imperial:

"— the Esso brand maintains the characteristics of major brand marketing. . . .Branded dealer price levels have been maintained with cross- merchandising through their carwash facilities.

"— the Econo brand, catering to the price conscious consumer, has been developed as a specialty type gasbar which combines gasoline service with a substantial line of small automotive and hard goods, and in some cases groceries. . . .

"— the *Gas for Less* sign and even unidentified outlets provide Esso with further flexibility in acute price areas."

(Document # 69268, June 21, 1972, Gulf, emphasis added)[782]

Gulf, too, emphasized the difference in the pricing policies of Imperial's branded as opposed to its unbranded network:

"The Econo brand is used to directly meet reseller competition while the Esso brand provides price leadership."

(Document # 66186, October 4, 1971, Gulf)[783]

"Esso operates Econo and Gas for Less outlets, Shell operates Gas Mart and Texaco operates Regent. Sunoco also have debranded outlets known as Consumer Fuels. The pricing policy on all these outlets is to compete with private brand outlets in their areas at the same price level. Shell, Texaco, and Imperial have taken all posted price increases at their branded outlets and used the debranded facilities for competing with discounters."

(Document # 69427, April 10, 1972, Gulf)[784]

Thus, these companies viewed Imperial's branded system as being used to lead prices upwards and the private brand part of the Imperial network as being used to combat the independents. As in the earlier period, other majors commented upon the predatory and disciplinary nature of Imperial's actions.

It was Texaco who commented that the majors, led by Imperial, had "discipled [sic]" the independents in the earlier period. In turn, Texaco recognized that this would force higher prices and "yield a reasonable return" (Document # 57439).[785] Indeed, Texaco's predictions as to the effect were proven accurate; the majors raised major brand prices in the late nineteen sixties.

With the advent of Imperial's second brand programme, other majors came to recognize its effect was the same as had been evidenced earlier — the disciplining of the independent. Shell, for instance, referred to Esso's Quebec second brand chain as a "fighting brand":

> "Esso, through Home and its subsidiary Econo are expanding in the unbranded market. Esso's Champlain brand is used as a *fighting brand* when required."
>
> (Document # 38497, September 19, 1969, Shell, emphasis added)[786]

Similarly, Gulf referred to Imperial's second brand strategy as a "weapon" to be used against the price discounters:

> "Their [Imperial] strategy appears to be to keep the Esso brand relatively free of the discount market while at the same time develop a single separate price brand (Relais in Quebec, Econo in the rest of Canada) which can be used as *a weapon against the unbranded price discounters* where necessary."
>
> (Document # 72354, September 30, 1969, Gulf, emphasis added)[787]

British Petroleum indicated that the reason Imperial and the other majors developed their own second brand outlets and extended their degree of vertical integration in marketing was that this served to raise the price at all unbranded outlets:

> "I sincerely believe, gentlemen, that the companies are going to have to get the volume through their own outlets. This is a reason Shell, Imperial Oil, Sun have gone the route of de-identifying a number of their outlets in order that they can use up their own refinery production and be in short supply as far as selling the jobber at a low price. *This will no doubt in time raise the price at all unbranded outlets and get the price more in line with the branded dealer.*"
>
> (Document # 9807, June 20-22, 1972, B.P., emphasis added)[788]

Also evidence of Imperial's anti-competitive behaviour is provided by events in 1973 as the tightening world crude market made offshore supplies increasingly difficult to obtain — a source that had provided the independents with a small cost advantage and, what was more important, access to a supply source independent of the domestic oligopoly. British Petroleum noted that as a result of the loss of their supply source,

"... the independents are finding survival extremely difficult and major company brands are reclaiming their lost market shares at a rapid rate."

(Document # 11427, July 11, 1973, B.P.)[789]

The difficulty faced by the independents lay not just in the higher prices they were having to pay. For their advantage over the brand did not lie primarily in their lower supply cost — as the majors admitted. The independents' survival was threatened because Imperial used its second brand network to squeeze the independent sector. In May of 1973, Gulf noted that Imperial's extensive second brand network was putting increasing pressure on all private brand operators (Document # 69143).[790] The precise nature of the squeeze was outlined by Shell. As the independents' costs went up, Imperial priced its second and third brand networks *below* the independents at retail:

"— In the past month we have seen virtually no deterioration in the unbranded pricing. Unbrandeds tend to remain at the 45 ± 1 cent range.

...

"— Esso's Gain has been aggressive staying 1 to 2 cents lower than the price in any trade area but never going below a 41.9 price."

(Document # 28377, April 30, 1973, Shell)[791]

Further elaboration upon the nature of the squeeze is provided by a statement from the General Manager of Shell who noted that while Imperial was posting wholesale prices which forced "the unbranded to post prices at something like 46.9-47.9¢" (Document # 27087),[792] Imperial's fighting brands, Gain and Econo, were "frequently below that price" (Document # 27087).[793] In the same document, the Shell General Manager noted the effect of this policy:

"... it's clear that this trade class [unbrandeds] is under some substantial price pressure by Esso.

...

"This will produce the squeeze on volume growth which has enabled the unbranded to keep margin down while achieving revenue through the volume multiplier."

(Document # 27087, May 9, 1973, Shell)[794]

The same observation — that Imperial was deliberately squeezing the independents by pricing below the lowest independent marketer in an area — can be found in the following excerpt from another Shell document:

"Esso appear willing to match our Branded price restoration, except where Gulf refuses to come up. However, they are being very aggressive with their Pribrands. Esso have opened a substantial number of Gain brand outlets during the past few months and appear to be using the current market situation to:

...

"— put the squeeze on the Unbrandeds through higher wholesale prices, combined with volume dilution in the market place;

. . .

"In a number of instances they are below the lowest Independent in the area."

(Document # 34427-8, Undated, Shell)[795]

Therefore, while pricing with the independents, unless Imperial was able to operate its second and third brand networks at a cost equal to or less than the costs of the independents, losses would have resulted. This is what occurred. The Ontario network of Econo stations was operated during this period at a loss. Table 33 presents the profitability of Imperial's Ontario Automotive Division as of 1970. The rate of return on the total operations for 1970 was 4.6 per cent. Two areas were notably unprofitable — car washes and the Econo second brand network. These were the two instruments being used to fight the unbrandeds at this time. Car washes were being used to cross-merchandise the brand. The second brand was being used directly against the discount segment. In the case of both instruments, the rate of return was a *negative* 26 per cent.

Similar results were experienced on Econo operations in Quebec. These stations were being used to price at 6 to 8 cents per gallon below Imperial's brand in 1971 (Document # IGDS 227-8)[796] against the independents. Imperial recognized that this meant the "majority of outlets operate in loss position retail-wise" (Document # IGDS 227-8).[797] A retail analysis prepared by Imperial for seven Econo stations in Quebec in 1971 showed negative net profits for their operation (Document # IGDS 227-33).[798] Imperial's other disciplinary agent in Quebec was its Champlain brand. In 1971, the pricing policy that was used was:

"*1971*

— MAINTAINED A 2.00¢ P.G. DIFFERENTIAL WITH MAJORITY OF DISCOUNT SEGMENT IN BAD PRICE POCKETS

— MAINTAINED MAJOR SEGMENT PRICING IN STABLE PRICE ZONES"

(Document # IGDS 1602, Undated, (1972), Imperial)[799]

This policy meant that all agency operations of Champlain — agency agreements were used to control prices in discounting areas—"were in a loss position of retail level" (Document # IGDS 238).[800] Moreover, Imperial recognized that its pricing policy in this area had to produce losses:

"—Champlain can meet return on investment requirements in stable price markets.

—In depressed price markets Gas Bars become unprofitable at 6.00¢/g discount and generate very low returns at discounts of 3.00 — 5.00¢ pg."

(Document # IGDS 486, Undated, (1972), Imperial)[801]

Thus, in the years 1970 and 1971, Imperial's second brand operations were unprofitable in both Ontario and Quebec.

The fact that the Ontario Econo network was being operated at a loss in 1970 was not due to unusual circumstances. For instance, the strategy that was designed for Ontario in the early nineteen seventies set targets of losses for 1971 and 1972, and minimal profits for 1973 through 1976. The target profits set for Econo were -1.89 cents per gallon in 1971, -0.72 cents per gallon in 1972, .20 cents per gallon in 1973, .92 cents per gallon in 1974, and 1.36 cents per gallon in 1975 (Document # 180338-40).[802] Capital employed was estimated at 39.8 cents per gallon in 1970 (Document # 181072-5)[803] and various projections of Econo's performance had capital invested per gallon falling to levels of between 20.9 cents per gallon (Document # 127228)[804] and 25.2 cents per gallon (Documents # 179479-83)[805] by 1975-76. Therefore even by the mid-nineteen seventies, some six to seven years after the implementation of Econo as a major investment, Imperial's return would have been only 5 to 6 per cent (Documents # 127228, 179479)[806, 807] well under its cost of capital.[1]

It should also be noted that the projected returns for Econo, even though less than the company's cost of capital, were highly uncertain. Imperial's second and third brand pricing policy meant that both brands would match the unbrandeds' prices no matter what the consequences were for short term profitability:

> "Third Brand prices will be governed by discount marketer's levels and derived thru [sic] negotiations. Econo prices will also respond to the varying market conditions by area."
>
> (Document # 118061, October 3-4, 1972, Imperial)[809]

As a result, the predicted price upon which Econo's profitability forecast was based was recognized as being subject to some inaccuracy:

> "Price is quite vulnerable: — gasoline, because of our retail involvement through retail operation and the necessity to react to private brand pricing; . . . ."
>
> (Document # 119963, August 13, 1971, Imperial)[810]

Table 34 shows the sensitivity of Imperial's calculations of the different marketing methods' profitability to changes in their environment. Econo was more sensitive to either price or volume fluctuations than either conventional stations or car wash combinations.

Together, the negative and low rates of return expected for Econo, along with the uncertainty that even these rates of return would be earned, indicate that achieving normal rates of return was not the objective that Imperial set for its second brand operations. As was appreciated by the other firms, matching the unbrandeds' price and then forcing their price level up was the objective of Imperial's second brand policies. It might be argued that

1. See prior footnote containing index references 695, 696, 697.

TABLE 33

PROFITABILITY OF IMPERIAL AUTOMOTIVE DIVISION, 1970

	C.O.S.S. LEASED	*C.O.S.S. SALARY*	*SERVICE CENTRES*	*CAR WASHES*	*C.O.S.S. TOTAL*	*DEALERS*	*ECONO*	*NON BRANDED*	*TOTAL*
Petroleum Volume	171,077	5,514	11,197	4,176	191,964	106,936	1,209	1,289	301,398
Revenue Whsle	56,672	2,820	8,195	1,871	69,558	32,568	372	277	102,775
Total Margin	20,733	1,447	4,576	1,031	27,787	11,592	164	66	39,609
Total Div Expense	7,911	1,203	4,272	1,266	14,652	3,201	388	5	18,246
Contribution	12,822	244	304	(235)	13,135	8,391	(224)	61	21,363
Support	7,236	215	527	205	8,183	4,754	44	34	13,015
Profit AT	2,637	14	(105)	(208)	2,338	1,716	(127)	13	3,940
Capital Division	48,323	2,495	9,026	625	60,469	14,826	438	45	75,778
Capital Support	6,012	194	393	147	6,746	3,758	43	45	10,592
	54,335	2,689	9,419	772	67,215	18,584	481	90	86,370
R.O.C.E. %	4.9	0.5	(1.1)	(26.9)	3.5	9.2	(26.4)	14.4	4.6

Note: COSS — company owned service stations
Source: Documents # 181072-5, Imperial[808]

TABLE 34

SENSITIVITY OF RATE OF RETURN OF CONVENTIONAL STATIONS, ECONO, OR CAR WASH

Changes in Environment	*Conventional*	*Econo*	*Car Wash*
10% Investment	.7%	.9%	1.3%
1¢ Price	1.2%	2.2%	1.4%
10% Volume	.8%	2.9%	1.7%
Free Car Wash			4.0%

Source: Documents # 119962-4, Imperial[811]

Imperial expected the second brands to eventually become profitable — that although losses might have been incurred for five years, the profits expected between years six and twelve would have compensated for the earlier losses. But if the second brands were used in a predatory fashion, Imperial would have expected a pattern of losses followed by profits. Therefore, it is not the losses *per se* that are evidence of predatory or disciplinary policy. What is significant is the fact that the losses coincided with the observations of the other companies as to the predatory use of this instrument. Together, the two pieces of evidence reinforce one another and demonstrate that Imperial like Shell used second brands as a disciplinary policy against the independent low price marketers.

Another piece of evidence that corroborates the predatory intent of Imperial is the time horizon adopted for its second brand policies. Second and third brands were to be temporary instruments. The short run nature of Imperial's debrand policies can be attributed to one of two reasons. First, like Shell, Imperial may have felt that once the price of unbrandeds had been forced upwards, it could dispense with all but a few such stations — the remainder being kept only for the maintenance of effective discipline. Secondly, Imperial may have intended their use only as a stop-gap measure in order to dilute the independent's market and to prevent the growth of this segment while it tried to adjust the costs of its branded network downwards. In the case of Shell, additional evidence of the disciplinary intent of its second brand strategy was provided by the short-term nature of this policy. Stations were to be debranded that could readily be rebranded once the independents were disciplined. Evidence also shows that Imperial's second brand strategy was similar in respect to its short-term nature. For instance, the following statement of the Imperial Executive Vice-President, R.G. Reid, indicates that Imperial considered its second brand operations to be only a temporary instrument:

> "With respect to our opportunities in the debrand market it can be argued that they exist solely because of the inefficiencies in the major brand. If that is true and we expect to make the major brand efficient in the longer term then it might be argued that the opportunity will not continue in the longer run. . . .

> "It has been argued that the Gain gas bar would only be used where we cannot use the Esso brand. This is not a long-term argument if we intend to bring the cost and productivity of the Esso gas bar to a level of the Gain and share these benefits with the customer."
>
> (Document # 118966, May 9, 1973, Imperial)[812]

It was Imperial's objective in the implementation of its strategy to "restrain growth in discount segment to permit growth in major brand segment" (Document # 179237).[813] The initial strategy to accomplish this — through the use of second and third brands — was, therefore, recognized as a short run strategy. For instance, an Exxon representative when presented with the strategy of third brands pricing with the lowest priced independents noted that this could only be short run in nature:

> "He [Larkins of Exxon] did not find the third brand approach particularly appealing. He argued that if we were going to carry out such a venture in the rural markets, we would probably also want to carry it out in the urban markets. *He felt that it was a short term strategy*; that the image effects of stations and political effects could be significant. He was even less disposed to the purchase Martin alternative, because he couldn't understand what it was we were buying. *He wasn't asking any questions that hadn't been already asked*."
>
> (Document # 180061, March 8, 1972, Imperial, emphasis added)[814]

In actual fact, both of the posited reasons for the short-term nature of Imperial's second brand policy were probably germane to Imperial's decision making. Certainly, the observations from the other majors suggest that the course of action that Imperial followed was aimed at increasing the unbrandeds' prices and if this was successful, second brands could eventually be rebranded. At the same time, Imperial no doubt, kept in mind that if this policy failed, it would have to reduce its marketing costs — but only as a last resort. That this was only a secondary or a fall-back strategy is suggested both from the way in which the strategy was implemented and from the changes that were made in this strategy as unbranded prices were forced up in 1973.

One of the major cost disadvantages of the majors' branded network was the higher capital costs per gallon pumped. This was caused by the large number of low volume stations which had been built as the result of the non-price competition among the majors. But, Imperial's strategy as developed for Ontario did not involve a substantial divestment of stations nor a substantial increase in volume per station of the traditional branded network. Table 35 presents the targets that were adopted for Ontario. Only six stations were slated for divestment for each of the years 1973 through 1975.

Also indicative of the disciplinary objective inherent in Imperial's second brand programme is that, with the successful squeeze on independents in 1973, Imperial cut back its second and third brand programme. A memoran-

TABLE 35

IMPERIAL TARGETS FOR ONTARIO STRATEGY
(Sales in 000 gallons)

Division	*1971*	*1972*	*1973*	*1974*	*1975*
Esso					
Sales	292.7	299.5	301.5	310.9	319.8
Outlets	527	533	533	533	533
Econo					
Sales	5.3	8.3	14.7	21.7	29.4
Outlets	16	24	34	42	50
3rd					
Sales	4.8	8.3	14.2	19.9	25.8
Outlets	17	17	17	17	17
Divest	—	—	6	6	6

Source: Documents # 180328-50, Imperial[815]

dum from the Executive Vice-President (Reid) to the Assistant-General Manager (Wisener), indicates that Imperial's approach to second brands was changed at this time. Reid stated:

> "I believe we reached the following agreements:
>
> . . .
>
> 2) There would be no further expansion of company operations excluding car-wash and self-serve.
>
> . . .
>
> 4) The pace of Gain will be slowed.
>
> . . ."
>
> (Document # 118057, May 18, 1973, Imperial)[816]

In this same vein, another memorandum the following month noted that with respect to Gain and Econo, "hold on all new investments and conversions from Esso brand" (Document # 118584).[817] That this was done was confirmed in testimony. When asked in 1975 whether Econo and Gain were to be "a long run thing" the Assistant General Manager replied:

> "No, we have not expanded it in the last year to two. . . .
>
> . . .
>
> "We are virtually in a hold position and we have not determined our long-term position."
>
> (Testimony of Mr. G.R. Wisener, Assistant General Manager Marketing Department, Imperial Toronto Hearings, 1975, Vol. XI, p. 1152)[818]

In summary, Imperial used its second brand strategy much as Shell did. Faced with the need to contain the price discounters as it moved the price of branded gasoline upwards, it entered the discount market as a short-term strategy. Its second and third brands were designed as fighting brands and its pricing policy, when the appropriate occasion arose in 1973, was used to squeeze the independents. In doing so, Imperial exhibited the same objectives that have already been documented from the earlier periods.

(d) *Consignment and the Use of the Brand to Complement the Second Brand Strategy*

(i) *Imperial's Traditional Use of Consignment*

While Imperial was developing and implementing its second brand strategy in the late nineteen sixties, it was simultaneously moving the prices of the brand upwards by increasing the wholesale/retail margin to the high levels of the late nineteen fifties. Imperial and Shell, as price leaders, had led major brand prices upward until by 1971 the median differential with independent marketers had reached some 8 cents per gallon in Quebec (Document # IGDS 1176)[819] and Ontario (Document # 179166).[820] Even so, as late as 1972, Imperial's objectives in the Quebec market were listed as "increasing price" (Document # IGDS 411)[821] and pressing "to maintain/lift/lead upward" of prices (Document # IGDS 412).[822] The "Objectives (Gasoline) Recognizing Need to 'Act Now' " were listed as:

> "1. Maintain the hard gained high Imperial existing pump price levels and encourage competitors (Shell) who are also so inclined to 'hold fast'.
>
> 2. Encourage 'price cut' inclined majors to 'lift' via 'tolerance method'."
>
> (Document # IGDS 417, March 22, 1972, Imperial)[823]

In 1972-73, Imperial modified its approach to containing the independents and supplemented its use of second brands with a widespread application of a subsidy programme for its brand. Its intention was, (at least temporarily), to reduce the differential between unbranded and branded prices of gasoline to restrict the unbranded marketers. This was the same policy Imperial had followed in the early nineteen sixties.

Imperial, as has already been outlined, had led the way previously in disciplining and containing the independents. Observations by Shell on Imperial's actions in 1959 in Winnipeg indicated that this company believed Imperial would contain independents elsewhere on the Prairies just as it did in Winnipeg through the use of selective price reductions with the brand. In commenting upon Imperial's actions, Shell noted:

> "Esso establish the tank wagon price and obtain approximately one third of the total volume through company owned and dealer outlets. To protect their large investment

Esso must maintain a policy of being competitive with any major marketer. *This same attitude would be adopted towards unbranded as evidenced in Winnipeg where the unbranded retailers were being contained by neighhbouring branded outlets selling competitively.*"

(Document # 41820, September, 1959, Shell, emphasis added)[824]

In the early nineteen sixties, when branded prices were decreased using consignment programmes, Texaco observed that the purpose of this action was to discipline the independents and to force higher unbranded prices:

"The most recent remedial policy vis-a-vis the mechanics of pricing undertaken by the leading companies in the petroleum industry has been the move to meet the price of unbranded jobbers. *The method of achieving price stability appears to be that of 'discipling' [sic] unbranded jobbers to maintain retail prices at a level which will yield a reasonable return at the service station level.* This move to lower prices by the majors, which was initiated by a principal company in the large markets of Toronto and Montreal in September and October of this year, is causing serious revenue problems for all major oil companies in these markets.

"*The stand taken by this principal company appears to be a move towards lower prices in order to force unbranded jobbers to raise their prices to equal that of branded outlets.*"

(Document # 57439, November 22, 1962, Texaco, emphasis added)[825]

While Texaco mentioned only that it was a "principal" company that led the majors' prices downward in an attempt to discipline the independents, British Petroleum explicitly identified Imperial as being the leader of this action. In 1966, British Petroleum evaluated the chance of their being able to merchandise gasoline under the B.P. sign at Canadian Tire outlets:

"Such an arrangement might have been possible 18 months ago [i.e. Fall 1964] when we knew that *Canadian Tire was suffering badly from severe price wars waged principally by Imperial Oil.*"

(Document # 11414, February 25, 1966, B.P., emphasis added)[826]

The accuracy of these observations have been confirmed by Imperial's own documents that described its behaviour in the Winnipeg and Vancouver markets. Again in the late nineteen sixties, there was evidence of Imperial using a subsidy scheme to lower its branded price temporarily to discipline the independents. In the previous section dealing with Texaco, it was recounted that Imperial used a wholesale price increase in conjunction with the implementation of temporary allowances to squeeze the independents. Texaco recounted the effect this policy had on the independents in Ontario:

"Imperial's action has made it very difficult for the private brand jobber who has been buying on a fixed discount off dealer tank wagon. In other words, they have moved the cost of the jobber's product up by .008 and forced the retail down by .01, thereby shrinking the jobber's margin by .018.

"Imperial have also changed some of the price zones which has put further pressure on the jobbers. . . ."

(Document # 46279, February 7, 1968, Texaco)[827]

Not only did Texaco recognize that Imperial was deliberately squeezing the independents, but it also noted how widespread this practice was. For instance, the same policy was also used in Montreal:

"This is exactly the same strategy that Imperial Oil have adopted in Montreal to force the prevalent retail price of .419 and there is little doubt that they can make this strategy stick wherever they wish to; particularly when they operate on consignment or salary, enough strategically located retail outlets to help force retail prices to the levels they believe are 'right'."

(Document # 46276, February 14, 1968, Texaco)[828]

Imperial, in Texaco's view, used strategically located stations on consignment to pressure the rest of the branded segment of the industry to adopt a policy that would squeeze the independents.

Imperial documents confirm that consignment programmes were used against independents during this period. Imperial, in a 1965 study of the Ontario Gasoline Market, provided details as to how it dropped prices using a consignment programme so as to bracket the lower priced independents. This study also confirms that Imperial was well aware of the superior efficiency of the independents. Noting that several types of independent marketer had developed—"mass merchandisers such as discount and department stores"—the study attributed the "price incentive" offered by the independents to the fact that:

"They primarily locate only in areas with sufficient population density to provide high volume, low unit cost operation. They often hold overhead to a minimum by offering none of the additional services, such as credit, which are offered by the major companies."

(Document # 118983, May, 1965, Imperial)[829]

While Imperial recognized the superior efficiency of the independents, it noted that they attempted, at times, "to maintain competitive price advantages of a size which others, including Imperial, are not prepared to cede" (Document # 118995).[830] The way in which Imperial reacted through the use of consignment is illustrated in the same study by a description of its actions in Sudbury. The 1965 Ontario study indicated that because of private brand expansion in Sudbury, by Flash[1] and by Canadian Tire, Imperial introduced consignment as early as 1960:

"To clarify the most recent sequence of events in Sudbury, one must go back to the entry and growth of the private brander in this market. The private branders are Flash and Canadian Tire Corporation, and their growth in numbers of outlets is illustrated below.

1. Flash was acquired by Gulf in February, 1961.

Year	*Flash*	*CTC*
1960	1	
1961	3	
1962	3	1
1963	5	1
1964	8	1

"The rapid build-up of competition has reduced Imperial's volume and market share, the largest impact being between 1962 and 1963 with the entry of CTC. . . .

. . .

"In 1960, as a result of indicated private brand expansion, Imperial offered its dealers the consignment arrangement. This guaranteed the dealers a commission range between 5.5¢ and 7.5¢/gal. depending on pump price levels, and took full responsibility for establishing the retail pump price."

(Document # 119016-7, May, 1965, Imperial)[831]

The consignment structure that was introduced in 1963 in Sudbury brought Imperial's pricing level to within 2 cents of Canadian Tire's net price with other majors pricing at this same level. Specific "offsetting" Imperial stations were brought to within 1 cent per gallon. For instance, in September 1963, the pricing structure in Sudbury was:

"CTC	44.9¢ less 5%
Flash	42.9¢
Major Brands:	44.9¢ (including 25 I.O.L.)
Exceptions:	*I.O.L. 7 at 43.9¢ offsetting Flash*
	1 at 44.9¢ less 1¢ offsetting CTC

(Document # 119020, May, 1965, Imperial, double emphasis added)[832]

As prices moved up in late October, Imperial continued to maintain the same relationship — though this time it set up two commission stations that priced against independent competition[1]:

"The second event related to Imperial's wholesale price. In recognition of pressure on the retail price, Imperial had instituted a posted allowance of .80¢/gal. off the wholesale price. When prices in Sudbury firmed by the extent noted above, Imperial elected to withdraw this allowance and did so on October 30, increasing at the same time the retail price at the two commission stations from 44.9¢ to 45.9¢ on regular grade re-establishing the former competitive retail price relationship with CTC. *Removal of the posted wholesale allowance resulted in further increase in pump prices by most Sudbury dealers to 47.9¢ during the first week in November. Prices then were as follows:*

---

1. It moved to this variant because branded dealers had formed an organization and were opposing consignment and subsidies.

CTC	46.9¢ less 5%
Flash	45.9¢
Major Brands:	47.9¢ (74, including 14 I.O.L.)
Exceptions:	
I.O.L.	2 Commission stations at 45.9¢
	11 Dealers at 46.9¢
Various other Major Brands:	47 at 46.9¢"

(Document # 119021-2, May, 1965, Imperial, emphasis added)[833]

Shortly thereafter, Canadian Tire raised its price to 47.9 cents per gallon, less 5 per cent, and Imperial adjusted its commission operated stations to maintain a 1 cent per gallon spread:

"Shortly afterward, CTC posted 47.9¢ less 5%. Briefly, prices at that point were as follows:

CTC	47.9¢ less 5%
Flash	45.9¢
Major Brands:	47.9¢

%Exceptions:

2 Canadian Oil	46.9¢
2 Shell	46.9¢
1 BP	46.9¢
1 Fina	46.9¢
2 Supertest	46.9¢
1 Texaco	46.9¢
2 Supertest	44.9¢

"After one week Imperial's commission outlets posted 46.9¢/gal. *returning to the former competitive price relationship with CTC and Flash* who were pricing gasoline at 47.9¢ less 5% and 45.9¢ respectively."

(Document # 119024, May, 1965, Imperial, emphasis added)[834]

The course of gasoline prices in Sudbury at this time was the subject of a Report of the Restrictive Trade Practices Commission.[1] The Commission expressed concern with the consignment practices that were revealed and quoted an earlier recommendation stemming from its report on North Star and Shell Consignment Plans[2]:

". . . the Commission considers that consignment plans of the type involved in this inquiry, when the primary purpose and obvious consequence are the control of prices and the stifling of competition at the consumer level, as detrimental to the public interest."[3]

1. Report in the Matter of an Inquiry Relating to the Distribution and Sale of Gasoline and Related Products in the Sudbury Area, Ottawa 1969 (R.T.P.C. No. 48).[835]
2. Report Relating to the Distribution and Sale of Gasoline in the City of Winnipeg and Elsewhere in the Province of Manitoba, Ottawa 1966 (North Star and Shell Gasoline Consignment Plans R.T.P.C. No. 40).[836]
3. Gasoline Prices in Sudbury, *op. cit.*, p. 33.[837]

The Report went on to note that the evidence did "not contain a specific explanation for the decision of Imperial Oil to operate two commission stations in Sudbury",[1] but observed the general purpose of Ontario commission stations as outlined in an Imperial memorandum was given as "pace-setting and which would stimulate higher standards of service, merchandising, housekeeping and appearance throughout."[2] However, Imperial's objectives for commission operated stations went beyond being a pace-setter for service. One of Imperial's objectives was the control of retail prices. In 1967, Imperial stated:

> "Part of the answer to the problem of company influence over pump price levels is in the diversification of retail gasoline outlets; types now in existance are:
>
> — company owned salaried operations
>
> — company owned retail commission dealers
>
> — company owned lessee dealers
>
> — company mortgaged dealer owned stations
>
> — dealer owned stations
>
> "We are in a position to establish prices at the first two types and try to position such stations in locations where they influence other Imperial Stations."
>
> (Document # 119183-4, March 1, 1967, Imperial)[840]

The Report of the Commission in the Sudbury gasoline inquiry did observe that the 'pace-setter' function of commission stations might be aimed at influencing the price of gasoline:

> "The most obvious feature of the 'pace setting' aspects of the Imperial Oil commission stations in Sudbury was the price differential of one cent per gallon maintained at the two outlets. It appears obvious that this policy was followed by Imperial Oil in an effort to influence the retail price level in the Sudbury area. While, as in the case of consignment selling, this policy might appear at first sight to be a public safeguard it provides a type of competition which is impossible to assess in terms of the validity of the economic basis for a particular level of prices. The independent or lessee-dealer must meet the costs of operating his business or face bankruptcy. Although it may be the case that the rental charged the lessee-dealer does not cover the full costs which could be attributed to the premises in which he is located, nevertheless he has his operating costs to meet out of the revenues which he secures from the sale of goods and services at his service stations. In the case of company-owned service stations operated by commission agents the economic consequences of the failure of revenues secured at those stations to meet the costs of establishing, maintaining and operating the stations do not come to bear in the way as that which must be faced by the individual dealer. It is undoubtedly true that the petroleum company is interested in operating its company-owned stations on a profitable basis and will use its best endeavours to that end. At the same time the

---

1. *Ibid.*, p. 134.[838]

2. *Ibid.*[839]

company may be interested, as Imperial was in Sudbury, in influencing the price level of gasoline, particularly in Imperial Oil stations, and was not averse to narrowing the gross margins of its dealers in seeking that objective."

(Report in the Matter of an Inquiry Relating to the Distribution and Sale of Gasoline and Related Products in the Sudbury Area, Ottawa, 1969, R.T.P.C. No. 48, pp. 35-6)[841]

Evidence that this was Imperial's purpose in using commission agent operations is provided in their documents which have been quoted. Moreover the intent to raise prices in Sudbury is evident as shown by the following report of the Area Sales Manager:

"It is interesting to note that our 5% discount that was put into effect to counteract Flash 3¢ differentials have apparently been somewhat successful in that Flash have increased their price..."

(Gasoline Sudbury, Document # 1088-9, December 16, 1963, Imperial)[842]

Thus both consignment and commission stations were used against the independents in Sudbury. The effect of these programmes is illustrated by this example.

After a period of pricing the brand with independents, Imperial succeeded in removing subsidies, thereby restoring major brand prices to 'normal' levels. At the same time, Imperial managed to raise the price of the independents to a level that was 1 to 2 cents per gallon below major brand prices. As is evident elsewhere this differential did not generally reflect the cost advantage that the independents had. As such, the monopolistic disciplinary practices employed by firms like Imperial may be said to have been inimical to the public interest.

Sudbury was not the only area where Imperial used its consignment programme for disciplinary purposes. Imperial employed the same exclusionary practice on several occasions in the Winnipeg market during the nineteen sixties. A previous section examined the predatory actions of Imperial Oil towards the independent sector in the Winnipeg market in the early nineteen sixties. In a 1964 memorandum, the Imperial Oil Provincial Sales Manager discussed the need to take price action against Radio Oils, an independent and referred to their earlier strategies in this market:

"...I suggest in view of this account's obvious intention to grab a substantial share of the retail market in Manitoba, that we discontinue supplying them through Refinery Sales. Furthermore, I suggest as soon as our contract is concluded with Radio Oils we take necessary price action to cut their volumes back to a more realistic level than the numbers they are presently enjoying. *Several years ago we found it necessary to move against Dominion Motors and other private branders whose pricing actions were causing our dealers great financial problems. The time has come to take the same type of action against Radio Oil.*"

(Gasoline Winnipeg II, Document # 336, April 29, 1964, Imperial, emphasis added)[843]

In 1967, Dominion Motors (Domo) a large unbranded had reduced prices to levels which Imperial was unwilling to grant. Prior to 1967, Domo had discounted their gasoline at 1-2 cents per gallon below branded prices — the differential Imperial established with its disciplinary pricing policies of the early nineteen sixties. However, this differential had increased to 4 cents per gallon in 1967. Imperial Oil was in a position to counter Domo's discounting because one of its stations — Norwood Esso Service — was located directly across the street from Domo.[1] In July of 1967, Imperial Oil's sales representative wrote the Area Sales Manager discussing Domo's pricing and the alternatives available to Imperial:

> "This Station was designed to be a large gasoline volume outlet, multi pumps and only two service bays. The location of this station dictates it must be considered a downtown or mixed traffic operation, therefore it requires a high volume of gasoline sales supported by a steady flow of "other sales." There are two avenues open, to increase our sales:
>
> 1. Add an additional service bay and take on heavier repair work.
> 2. Reduced gasoline prices to make the station competitive with Dominion Motors and draw traffic from other competitors."
>
> (Gasoline Winnipeg II, Document # 361-362, June 21, 1967, Imperial)[845]

The intent of this policy, however, was not to operate at these price levels in order to increase their volumes on a long-term basis but was done in order to discipline the discounting Domo outlet—"to force Dominion back in to line" (Gasoline Winnipeg II Document # 362)[846] The Imperial sales representative recommended that a pricing strategy of matching Domo's prices was required. Imperial, after a two week period of matching Domo would "slowly raise the price" Imperial stated:

> "Should we follow step two, and increase our gasoline sales, it would automatically increase ous sales of "Other" products and improve the productivity of the station. The sobering thought is here — will this start a price war. I believe this is a risk we must take *to force Dominion back* "*in to line.*
>
> "Recommendations:
>
> 1. We drop out pump prices by 4¢ a gallon to 40.9 as this would match Dominion Motors at Norwood Bridge.
> 2. Post signs indicating 4¢ off.
> 3. Continue to match Dominion for a period of two weeks and then slowly raise the price."
>
> (Gasoline Winnipeg II, Document # 362, July 21, 1967, Imperial, emphasis added)[847]

---

1. Refer to Document # 363, Gasoline Winnipeg II — which is a map showing the location of Norwood Esso and Dominion Motors.[844]

One week later, Imperial Oil, Area Sales Manager wrote to the Provincial Manager recommending that price action be taken in order to 'communicate' a 'message' to Dominion Motors. Imperial stated:

> "*ACTION* is required by *Imperial Oil Limited* to transmit a message to all marketers in the Winnipeg Market. A message indicating that we do not intend to give away volume continually to discount prices and promotions. *I recommend we start by communicating this message to Dominion Motors at Norwood Bridge*."
>
> (Gasoline Winnipeg II, Document # 359, July 27, 1967, Imperial)[848]

The Imperial Area Sales Manager recommended a pricing strategy against Domo which was progressively more severe and which was intended to force Domo's price upwards. This strategy involved matching Domo's pump prices for increasing periods of time should Domo not follow Imperial's price increases. In addition, this strategy involved matching Domo's prices at another location "for additional communication." The recommended actions were:

> "1. Post Norwood Esso (a commission station) at 40.9¢. Display 4.0¢ discount sign for 24 hours. This should occur on a Monday morning and be removed on a Tuesday morning.
>
> 2. If Dominion does not change their pricing by Friday evening of the same week,, I recommend we post the same pricing from Saturday to Tuesday A.M.
>
> 3. Should no change occur by the following Friday from action #2, I recommend we post the same discount for one week, then remove and see if any results can be determined in respect to competitive reaction.
>
> 4. If no reaction occurs after one week by Dominion, I recommend we post Norwood for a two week period and assiss [sic] reaction daily.
>
> 5. If no reaction is forthcoming, I suggest we simply increase our posted discount period by a week up to a month.
>
> 6. If no action is evident by competitors *after step* # 3, I suggest we also consider posting Portage & Amherst for 24 hours for additional communication on their Ferry Road Safeway location."
>
> (Gasoline Winnipeg II, Document # 359-360, July 27, 1967, Imperial)[849]

Imperial's Provincial Manager accepted this strategy and recommended to the Region Sales Manager that Imperial's branded prices be reduced to match Domo. The Provincial Manager recognized that Domo's 4 cent differential made another independent — Simpsons-Sears "reticent" to move their prices upwards. As a result, the Manager indicated that Imperial could "offset" Domo's prices "on a temporary basis" in order "to force Dominion Motors to reduce their price differential" (Gasoline Winnipeg II, Document # 366)[850] Imperial's Provincial Sales Manager stated:

> "You are aware of our position with reference motor gasoline volumes in Metro Winnipeg. In recent weeks Simpsons-Sears narrowed their differential with the major

brands from 4¢ to 3¢. We had expected a further upward movement by this marketer but it appears this will not be forthcoming for the moment at least.

"We believe Simpsons-Sears are reticent to move up an additional penny with Dominion Motors pricing 4¢ off major brands. We are therefore proposing *to offset Dominion Motors' pricing at our Norwood Bridge location on a temporary basis in an effort to force Dominion Motors to reduce their price differential.*"

(Gasoline Winnipeg II, Document # 366, August 4, 1967, Imperial, emphasis added)[851]

Concerning price strategy, Imperial's Provincial Sales Manager stated that:

"We therefore recommend that on Monday, August 21, we reduce our pricing at #4 St. Mary's Road to 40.9¢ per gallon, (this is an RCD outlet), and post our price. We would leave our price at this level until noon Tuesday, at which time we would increase it to 44.9¢ per gallon. If Dominion Motors does not react to this by Friday, August 25, we would take the same action on Monday, August 28, only this time we would remain at 40.9¢ until Wednesday morning, August 30. At that time we could review our position and make further plans. *In my many years of experience in this market I have rarely found Dominion Motors prepared to reduce differentials unless they were given an indication that price levels would be depressed unless they took some action.*"

(Gasoline Winnipeg II, Document # 366-367, August 4, 1967, Imperial, emphasis added)[852]

This excerpt also confirms that Domo had been effectively disciplined on other occasions through the threat of depressed price levels.

By November of 1967, Dominion Motors had increased their prices to a level of 3 cents per gallon below Imperial and the other majors. Imperial, however, continued with a pricing strategy which was intended "to establish the Independents at 2¢ below the majors" (Gasoline Winnipeg II, Document # 368-369, Imperial).[853] Imperial's pricing strategy threatened 'to trigger some action from the Texaco dealer just south of Norwood Esso.' In order to continue with this pricing strategy therefore, Imperial would "make it very clear" to their dealers and the "A.T.A." that this pricing was due to Domo's "refusal to steady the market":

"This is the third time we have discounted at 3¢ off. As Dominion have not moved to 2¢ I don't believe they ever intend to. We could try once again and hold the position for a week to 10 days. However, this would no doubt trigger some action from the Texaco dealer just south of Norwood Esso.

"If we intend to establish the Independents at 2¢ below the majors, we will have to take the gamble. In doing so, we should make it very clear to our Dealer organization and the A.T.A. that it is the result of Dominion's refusal to steady the market."

(Gasoline Winnipeg II, Document # 368-369, November 19, 1967, Imperial)[854]

The evidence from the Winnipeg market, therefore, illustrates the disciplinary intent of Imperial's strategy. Imperial's strategy was to reduce its branded price at a station across the road from Dominion Motors in order to

'communicate a message' to Domo with the intent of forcing 'Dominion back in line.' Imperial's reduction in prices were only to be 'temporary'. The 1967 incident was not an isolated incident for, in their considerations, Imperial referred to the fact that several years earlier they had moved against Dominion and other private branders in order to establish acceptable price differentials. Both in the Sudbury and Winnipeg markets, therefore, Imperial employed disciplinary practices aimed at 'forcing' the independent sector to price at levels that were dictated by the major marketers.

(ii) *The Change in Brand Strategy, 1972-73*

Imperial, in leading the majors' reaction in the early nineteen sixties to the independent sector, had appreciated the importance of maintaining low differentials with the unbrandeds. In 1966, an Imperial executive explained that in areas where price competition existed, the majors could not live with a price more than one to two cents per gallon above the independents. In referring to the larger gasoline markets, he explained:

> "This is where price wars ordinarily break out and persist. They needn't be too volatile because eventually the market can find — unless there's severe surplus capacity that's doing things to buying costs for private branders — what is a *reasonably stable price relationship between the private brander* and most of the major brands. It used to be considered — and this is sort of rule of thumb just from experience—*that a major brander could live reasonably comfortably alongside a private brander who was charging two cents less.* However, because of these volatile price war situations the motorist has, in most places, become much more conscious of price than he used to be, *and most major brand operators today don't feel comfortable if they are more than one cent above someone of this kind. In some cases, depending on the private brander's attractiveness to the public, the major brander may have to equal him. However, eventually you can arrive, through the normal inter-play of the market, at a sort of equilibrium situation.*"
>
> (Document # 135380, June 1, 1966, Imperial, emphasis added)[855]

As has been developed earlier, the course of Imperial's actions in Winnipeg and Vancouver confirms the application of this policy. Imperial's strategy during the price wars of the early nineteen sixties had the effect of forcing the independents to adopt a price strategy that would have little effect on the market share of the majors' branded stations.

The advent of second and third brand networks marked a change in strategy. Heretofore, Imperial and the other majors had reacted to competition from the discounters with subsidies for the brand. With the introduction and use of second brands to discipline the independents, Imperial moved the differential between the brand and independents upwards to some 8 cents per gallon. However, by 1972, a new strategy was implemented to reduce branded prices. The brand and the second brands were jointly employed to constrain the independents' growth.

That Imperial should have allowed price differentials to reach the high level that they did might be attributed to a learning experience. Having pushed branded-unbranded differentials to record high levels in the search for an optimal degree of price discrimination, the majors might have discovered that even their second brand strategy was unable to contain the growth of the independent sector. While this is not an implausible explanation, it is only a partial one. For, as developed previously, the sudden change in tactics in 1972-73 corresponded with dramatic shifts in the majors' control of crude supplies. The majors, by 1972, had already predicted that their loss of control over crude would accelerate and they had begun to move to extend their control over downstream markets.

The fact that branded wholesale/retail margins were permitted to reach such high levels might also be construed as a deliberate strategy to gain control over branded prices. Control was essential, as Imperial recognized, if its multiple pricing strategy was to be implemented effectively. Imperial's documents mirror this concern. For example, listed among prerequisites for success of its basic strategy was "retail control" (Document # 118399).[856] More explicitly, Imperial outlined the objective of its Ontario strategy as:

> "1. To develop a mix of company operated and dealer operated locations with minimum operating objectives being:
>
> (a) *Control of retail gasoline price*
>
> (b) Control of retail merchandise and service offers
>
> . . .
>
> "3. *To evaluate the means by which Imperial can gain control of price and merchandise offers throughout the system.*
>
> . . ."
>
> (Document # 118382-3, April 5, 1972, Imperial, emphasis added)[857]

While control over retail pricing was its objective, Imperial also recognized that this was not always readily attainable:

> "We have a number of problems which are quickly apparent when you think about cutting price in a significant way. Return and profit growth are obvious; *price influence at retail is presently not possible and is difficult to obtain.* . . .
>
> "We are presently working on this problem—*evaluating alternate ways of getting control of price,* . . . "
>
> (Document # 180255, September 27, 1971, Imperial, emphasis added)[858]

The reason for the difficulty that Imperial faced in controlling retail prices lay in the form of its distribution system. The lessee-dealer system normally left decisions over retail margins in the hands of the dealer. The exception to this occurred when consignment schemes were implemented. In this case, the supplier directly set the pump price while paying the dealer a sum for

handling the sale. Thus, when the dealer was on consignment, Imperial could control his retail price and lower it to whatever level it felt necessary to discipline the private branders.

It should be noted that the control given Imperial by the use of consignment was equally important for the success of its subsequent attempts to return prices to higher levels — especially in light of Imperial's leadership role. As the material in the Gulf documents demonstrated, this firm learned that after squeezing the independents, it was important to move prices up slowly so as to maintain a minimal differential with the discounters. Otherwise, the independents were often tempted not to follow. This goal would have been even more important for the price leader — Imperial. Imperial, itself, recognized the importance of control in this sense. As it was leading prices upward in 1973, part of its strategy was to maintain "retail price participation" through the use of consignment to ensure that "there is no sudden and large increase in the retail price" (Document # 120008).[859]

Therefore, whether it was for the purposes of moving prices downwards to discipline independents or of maintaining discipline during an upwards movement, consignment provided the control necessary to let Imperial set prices. But Imperial faced a problem in implementing consignment. Dealers were not required to accept consignment. There had to be some incentive provided to persuade them to join the programme. It is possible, therefore, that Imperial deliberately permitted wholesale margins and retail prices to drift upwards so that when consignment was offered and retail prices were set 4 to 5 cents below previous levels, the dealers would have had no choice but to accept consignment or be completely uncompetitive. Merely letting prices drift ½ to 1 cent above the optimum would not have been sufficient. At these levels, if prices were decreased at Imperial controlled stations by this amount, it is possible that not enough other Imperial dealers would have accepted consignment. Without the widespread acceptance of consignment, Imperial's degree of control would have been constrained.

The potential power to control prices via the consignment route was outlined in the following study done by an independent consultant for the Quebec government. This study characterized the manner being used to force dealers onto consignment and thus to control prices in Quebec in the following terms:

> "The price leader of the oil industry happens to be Imperial Oil. The method used by Imperial to control the retail price of gasoline is quite interesting. Under the guise of permitting their lessees to be more competitive, they offer a $0.02 additional allowance per gallon if the lessee agrees to sell gasoline at $0.499/gallon and $0.549/gallon. The document deliniating [sic] the precise conditions under which the $0.02 allowance will be given may be found on the next page. There are two things that are interesting about this allowance. The first is that the wholesale price of

gasoline is artificially inflated. Therefore, instead of making the usual $0.088/gallon, the Lessee only makes $0.068/gallon.

"The other interesting quality in this allowance is that it may be withdrawn at any time by Imperial. In the document it states,

> 'We reserve the right at any time to withdraw this offer to cancel the allowance, and to amend the terms on which it is given, and you are free to accept or reject this offer and, if you accept it, to terminate the arrangement at any time on 48 hours notice to us.'

"The result of this arrangment is that in addition to all the potential power enjoyed by the company under the conditions of the lease, it now enjoys an additional leverage. This leverage has the potential of whipping the lessee into line by threatening to withdraw his $0.02 allowance. This would have the effect of making the sale of gasoline completely unprofitable. For, at a $0.068/gallon no one would realize profits unless they experience a substantial increase in volume.

"The lessee of course, would be foolish to refuse the offer. He knows that his competitors are buying gasoline at $0.02 less than himself. If he was to raise his price beyond the $0.499 and $0.549 suggested limit, it would be financial suicide for him. Hence, the retail price of gasoline desired by Imperial Oil is instituted.

"Imperial Oil has a formidable number of gasoline stations in Montreal. Therefore, a large segment of the market is offering gas at the price desired by Imperial. In addition to this, Gulf also possessing a large segment of the market desides [sic] that $0.499 and $0.549 per gallon is the right price for gasoline. Keeping in mind that Gulf still retains the Consignment Commission system, the entire Gulf network of service stations institutes the $0.499 and $0.549 per gallon price. Needless to say, it is not long before the rest of the oil companies suggest a retail price of $0.499 and $0.549 per gallon.

"Thus by artificially inflating the wholesale price of gasoline Imperial, backed up by Gulf, manages to take the power to decide the price of gasoline away from the lessee.

"It may be argued that the lessee can sell at whatever price he chooses below the $0.499 limit set by Imperial. True, but if one takes into consideration the $0.088 maximum margin on gasoline, this does not leave much room for setting prices below the $0.499 limit. If the lessee should desire to reduce his price he can very seldom do it without discussing with the oil company the possibility of sharing the costs. Thus, maintaining the low margin of $0.088/gallon works directly to the interests of the oil companies in that it is low enough to make it impossible for the lessee to cushion reductions without the help of his lessor. That is, oil companies can and do control both the regular price of gasoline and the reduced prices of gasoline."

(Document # 53771-2, Undated, Texaco)[860]

Since branded/unbranded price differentials in the early nineteen seventies had expanded to the level where the viability of many branded dealers was threatened, the offer of consignment at this time promised to permit Imperial dealers to become competitive once more and was accepted by a large number of Imperial dealers. As a result, Imperial gained control of branded prices across its dealer network.

(iii) *The Three-Tiered Pricing Strategy*

The new branded pricing strategy adopted by Imperial in 1972 was based on the assumption that Imperial's brand could only sustain a price differential of 4 cents per gallon above the discount brands, that Econo could obtain 2 cents per gallon more, and that Gain could not charge any premium:

> "... the strategy assumes that the consumer will pay more for Esso gasoline, an average of 4¢/g more [over discount brands] because we have associated mechanical repair services. The Econo consumer will pay 2¢/g more because the offer includes merchandise coupons. The Gain customer is not expected to pay more for gasoline."
>
> (Document # 117304, November 22, 1972, Imperial)[861]

The actual pricing policy that Imperial adopted in Quebec to fight the independents in 1972-73 incorporated these differentials—4 cents per gallon between the major private branders and the brand, 2 cents per gallon between Imperial's second brand and the average prevalent private brand, and no difference with the third brand. The following excerpt outlines the strategy for the Quebec market:

> "*ESSO*
>
> 1. Should generally be competitive with Shell, Texaco and Gulf wherever their volumes are affected by lower prices from any of these.
> 2. Should be positioned at *4¢ above the major private brander* within a given trading area.
> 3. Self Serve units should be priced at 3¢ below the normal price in the trading area or remain competitive with other major Self Serve units.
>
> "*CHAMPLAIN*
>
> A general discussion took place as to the difference that should be made between a Champlain gas bar and a Champlain full service unit. It was agreed by the Committee that such a difference should not be made and that the Champlain brand should continue to price in line with regional competitors. In depressed areas Champlain at 2¢ above the average prevailing private brander price. *It was also agreed that in full price markets Champlain will not decrease their prices below the majors*. No pricing action should be initiated by Champlain in their outlets below 50,000 gallons.
>
> "*ECONO*
>
> Should position themselves at a level which is 2¢ above the average prevalent private brander price and should not at this time take their prices to a level higher than 49.9¢ per gallon so as to show that they are still a discount outlet. Couponing percentage should be a function of the prevalent price at the outlet and should vary up to a maximum of 5%.
>
> "*GAIN*
>
> *To meet the major private brander pricing within a trading area*. For the time being prices should not be lower than 47.9¢."
>
> (Document # 119971-2, May 14, 1973, Imperial, emphasis added)[862]

This multi-tiered strategy was designed to counter the independents' growth. With the Esso brand positioned two cents above the 'clean' discounters, with a second brand like Econo or Champlain pricing at the same level, and with third brands pricing along with the lowest discounters, Imperial felt the independents' growth could be checked. This is illustrated by the following excerpt dealing with Imperial's Quebec strategy:

> "a) At a 2¢ differential from the majors, the clean price-off outlets will not grow significantly.
>
> The differential is currently 5 to 8¢.
>
> To be competitive, from a price point of view, the retail price at major outlets must therefore be reduced from 3¢ to 6¢ from its current level.
>
> . . .
>
> b) The 'price-off' dirty will not prevail when the market is price competitive.
>
> c) In attacking the prime target 'the price-off' clean outlet, we affect others."
>
> (Document # 179143, September 27, 1971, Imperial)[863]

This policy was envisaged not only to reduce the growth of the independent sector but also to cause some decrease in competitor activity. As the following excerpt indicates, Imperial expected to see firms exiting the industry as a result of its policy:

> "At this price level, discount volume growth will be retained and there will be significant competitive disinvestment within the medium term."
>
> (Document # 118383, April 5, 1972, Imperial)[864]

A three-tiered pricing strategy similar to that used in Quebec was also used in Ontario. In commenting on the similarities between the Ontario and Quebec Studies, Imperial noted that:

> "— PERFORMED SIMILAR STUDY IN ONTARIO LAST SPRING AND ARE CURRENTLY IMPLEMENTING
>
> — THE PROBLEMS IDENTIFIED IN QUEBEC ARE SIMILAR TO THOSE IN ONTARIO
>
> — STRATEGY SUGGESTED FOR QUEBEC IS SIMILAR TO ONTARIO, THE ONLY DIFFERENCE IS THE PACE OF IMPLEMENTATION AND THE FACT THAT WE HAVE HAD A SECOND BRAND ESTABLISHED FOR SOME TIME E.G. CHAMPLAIN."
>
> (Document # IGDS 1178, December 21, 1972, Imperial)[865]

The Imperial strategy, however, was not confined to just Ontario and Quebec. In early 1973, the Esso Automotive Manager sent a memorandum to all automotive managers across Canada confirming and elaborating upon this strategy. The instructions outlined Imperial's intentions to reduce the branded differential with the private brand marketers:

"There is every indication that significant price action will be required throughout the near term to maintain the major brand competitiveness of Esso and to improve the productivity of the chain. Therefore, to ensure that we generate the greatest possible returns from these investments and that we accumulate experience to test the validity of many of our strategic planning assumptions, it is essential that we establish some consistent guidelines governing our tactical wholesale and retail pricing decisions. I should emphasize that any reference that may be made to retail price action relates strictly to those outlets where we participate directly in the retail operation (e.g. Servacar; Agency or Consignment locations).

"Our pricing strategy has two main thrusts:

(i) First, we must remain directly and immediately competitive in our retail pricing with our major brand competition (N.B. — major brands are defined as those competitors with a similar consumer offering who enjoy at least 10% of the market in any local market.)

"(ii) *It is our desire to progressively move toward target W/R margin levels in each region which will lead to reduced differentials with the private brander*, thus increasing the opportunity for Esso brand growth. These margins, stated in terms of base point pricing, are attached to this letter. Their application to other markets simply requires the addition of the appropriate zone differentials."

(Document # 119619, February 19, 1973, Imperial, emphasis added)[866]

This directive shows that, while Imperial recognized the importance of other majors' pricing strategies, the target of its actions was the independent private brand marketer. Moreover, even though Imperial recognized that it would be desirable "to effectively reduce the margin requirement by our marketing system" (Document # 119620),[867] their short run objective was to price 4 cents above the independents:

"While our pricing actions are primarily oriented towards competition in the major brand segment of the market, we must continue to recognize the impact of significant differentials with the private brand marketer. *When and if these differentials increase significantly beyond 4.0¢, regardless of the action of the other majors, the regions should not hesitate to recommend a change in their pricing tactics*, particularly when volume erosion to these competitors is indicated through our price/volume monitoring system."

(Document # 119620, February 19, 1973, Imperial, emphasis added)[868]

In Ontario, the pattern of aggressive pricing that resulted is depicted in Table 36. It presents a summary of Imperial's retail pricing pattern by zone as of May 25, 1973. In three of the zones, Imperial's consignment price was only two cents above that of the independents. In all but one of the others, Imperial's brand price was less than four cents above the unbrandeds (if the higher priced independents are used for comparison).

By May 9, 1973, Imperial had implemented the four cent price differential in Quebec. Table 39 presents a summary of retail pricing in

TABLE 36

ONTARIO PRICE ANALYSIS BY MAJOR MARKET
ONTARIO ZONE SUMMARY

	T/W + P.R.T.	Margin	No. Supp. Price	Current Consign Price	I.O.L. Comm.	Comp. Commission Tex.	Shell	Gulf	I.O.L. Support	Comp. Commission Tex.	Shell	Gulf	Rec. Pump Price	P.B. Range	I.O.L. Comm.	Comp. Commission Tex.	Shell	Gulf	I.O.L. Support	Comp. Commission Tex.	Shell	Gulf	Dealer Margin 10¢ +
ZONE I	45.4	7.5	52.9	49.9	6.50	6.9** 7.5**			2.00				51.9	43/47	7.5				1.0				55.9
ZONE II	46.0	7.9	53.9	49.9	6.25	7.0	7.0	7.0	2.35	3.1	3.1	3.1	52.9	45/49	7.5	8.4	8.1	7.5	0.6*	1.5	1.2	.6	56.9
ZONE III & IV	46.4	7.5	53.9	49.9	6.25	—	—	7.0	2.75				52.9	47.9	7.5				1.0				56.9
ZONE V & VI	47.0	7.9	54.9	49.9	6.00				3.10				53.9	47.9	7.5				0.6*				57.9
ZONE VII (1.5 All)	46.4	7.5	53.9	49.9	6.25				2.75				52.9	47.9	7.5				1.0				56.9
ZONE VIIA & VIIIB (2.0 All)	45.1	7.8	52.9	50.9	7.00	8.4	8.4	8.2	1.20				51.9	45/47	7.5	8.7	8.7	8.5	0.7*				56.9
ZONE VIII (1.5 All)	47.4	7.5	54.9	49.9	6.00				3.50				53.9	44/45	7.5				1.0				55.9
ZONE IX	47.4	7.5	54.9	50.9	6.25				2.75				53.9	47	7.5				1.0				57.9
SAULT STE MARIE	46.7	8.2	54.9	49.9	6.00				2.80				52.9	46/48	7.5				1.3				57.9

SAMPLE		*Ex. Tor*
Total Accts.	2,112	1,100
49.9+ (76%)	1,614	700 (63%)
48.9- (24%)	498	400 (36%)

**Handwritten on original

*Increase Dealer Margin ? .5
Chge. Price Pt. Down

Source: Document # 120010 Imperial[868a]

Montreal as of 1973 (Document # 120007).[869] It shows that in areas where Imperial faced competition from the major private brand — Calex — the Imperial brand price was 4 cents per gallon below the full price areas and only 4 cents above those of the independent.

Shell, in following, Imperial's policy at the time correctly perceived that the leader's objective was to establish this four cent per gallon price differential with the unbrandeds. Two weeks before the date on Table 36, Shell's General Manager, in commenting on Imperial's pricing policy, stated:

> "*Possibly* the unbrandeds will perceive this as a sign on the part of Esso to allow a four cent differential at the pump."
>
> (Document # 27088, May 9, 1973, Shell)[870]

Even more detailed observations by Shell are available on the course of retail pricing in early 1973. In a March 1973 memorandum, Shell observed that Imperial had lowered its price to within 2¢ of the independents in a number of areas and "in London core they lead the majors to meet the unbrandeds at 41" (Document # 58795).[871] Referring to Imperial's post April behaviour, Shell also noted that Imperial was using Gain brand outlets to:

> ". . . put the squeeze on the Unbrandeds through higher wholesale prices, combined with volume dilution in the market place;"
>
> (Document # 34427-8, undated, Shell)[872]

More detailed information on the course of retail pricing at this time can be found in Tables 37 and 38. Table 37 is a Shell document entitled "Central Marketing Region, Pricing Profile". It provides a distribution of the number of stations at different price levels. Table 38 is based on Table 37. It presents the average discount off 'normal' or full pump price for each company and the unbranded/branded price differentials for this period. From Table 37 it is apparent that Imperial in March of 1973 moved some 48 per cent of its stations to discounts of between 5 and 10 cents per gallon. Table 38 indicates that the average differential so created with unbrandeds dropped below 4 cents to some 3.8 cents per gallon for Imperial.

These price reductions were obtained via the implementation of consignment-type subsidy schemes. Substantial amounts were budgeted for each subsidy in the two prime areas of independent activity — Ontario and Quebec — some \$3.55 and \$1.24 million respectively (Document # 119621).[873] With the implementation of this strategy, prices were dropped on a wide scale across the province of Ontario. The extent to which consignment was used is given by the following report of the Ontario Region Automotive Manager. It indicates

that some 44 per cent of total volume was being sold via consignment in early 1973:

"*Consignment Support Costs*

— To-date Consignment Support Costs — 1.6¢ versus year-end objective of 1.3¢

— *44% of volume on consignment versus year*-end objective 40%

— Support costs per consignment gallon = 3.46 versus year-end objective 3.26¢

— Total accounts on consignment = 608"

(Document # 119626, March 19, 1973, Imperial, emphasis added)[874]

TABLE 37

CENTRAL MARKETING REGION
PRICING PROFILE

NOVEMBER 10, 1972
*NOVEMBER 24, 1972
*DECEMBER 11, 1972
MARCH 28, 1973
+ JUNE 19, 1973

Category	*Shell*	*Esso*	*Gulf*	*Texaco*	*BP/ Supertest*	*Mini Major*	*Unbranded*	*Total*
Full Price + or − 1¢	63.6	66.2	56.4	52.5	44.0	41.7	3.4	47.6
	85.8	64.7	55.1	57.1	46.2	47.4	3.2	52.7
	63.0	62.7	52.8	51.8	42.7	45.3	3.5	46.4
	42.4	41.2	40.2	41.5	34.9	28.0	2.0	32.9
	37.9	41.3	34.6	35.0	21.1	23.8	1.9	28.0
2 - 4¢ Below	6.2	6.7	5.4	7.8	6.0	8.0	8.3	7.1
	6.9	12.1	10.2	8.5	7.9	10.0	20.5	10.6
	12.5	14.1	9.6	14.9	14.2	15.0	6.4	12.4
	9.3	10.5	4.5	9.6	10.6	7.6	6.0	8.5
	25.6	47.2	26.2	32.0	36.0	29.7	19.1	30.8
5 - 7¢ Below	18.7	15.9	21.2	23.5	30.2	29.1	32.9	23.8
	5.9	15.8	20.4	19.6	26.0	23.3	33.0	20.1
	15.9	12.8	21.8	19.9	25.6	21.6	28.2	20.7
	30.7	27.1	32.4	26.4	27.9	36.8	26.2	29.6
	33.1	9.3	34.2	29.2	37.2	36.0	48.3	32.7
8 - 10¢ Below	11.4	11.3	17.0	16.2	19.8	21.2	55.4	21.4
	1.4	7.5	14.3	14.7	19.9	19.3	43.3	16.5
	8.7	10.5	15.8	13.4	17.5	18.2	61.9	20.5
	17.6	21.2	22.9	22.5	26.6	27.6	65.7	29.1
	3.4	2.2	5.0	3.8	5.7	10.5	30.7	8.5
# of Stations Reporting	1,237	905	803	761	1,094	895	893	6,588
% of Total	18.7	13.7	12.2	11.6	16.6	13.6	13.6	

*Mini Price Restoration
+New District Configuration

Source: Document # 58590, Shell[875]

TABLE 38

AVERAGE DISCOUNT OFF FULL PRICE (¢/gal.)

	Shell	*Esso*	*Gulf*	*Texaco*	*U/B*
November 10, 1972	2,334	2,172	2.964	3.102	7.209
U/B — Brand Difference	(4.875)	(5.037)	(4.245)	(4.107)	
November 24, 1972	.687	1.986	2.817	2.754	6.492
U/B — Brand Difference	(5.805)	(4.506)	(3.675)	(3.738)	
December 11, 1972	2.112	2.136	3.018	2.847	7.455
U/B — Brand Difference	(5.343)	(5.319)	(4.437)	(4.608)	
March 28, 1973	3.705	3.849	4,140	3.897	7.665
U/B — Brand Difference	(3.960)	(3.816)	(3.525)	(3.768)	
June 19, 1973	3.060	2.172	3.288	3.054	6.234
U/B — Brand Difference	(3.174)	(4.062)	(2.946)	(3.180)	

Note: Medium price was chosen for each range when calculations were made.
Source: Table 37.

The tactical pricing guidelines used to implement this policy set "target W/R margins" of 12-13 cents per gallon in Toronto and Montreal, but 14.5-15.5 cents per gallon in Halifax and Edmonton (Document # 119622).[876] The goal of meeting the independents is illustrated by Imperial's explanation of this differential:

> "Western and Atlantic retail and wholesale margins should be inflated by at least 1.0¢ over Quebec and Ontario levels in recognition of the relatively low risk of such action in the short term."
>
> (Document # 119622, February 19, 1973, Imperial)[877]

TABLE 39

RETAIL PRICING MONTREAL
AS OF MAY 9, 1973

	Full Price Areas		*Support Price Areas*	
Company	*Last Report*	*This Report*	*Last Report*	*This Report*
I.O.L.	53.9	53.9	49.9	49.9
Shell	51.9	53.9	49.9	49.9
Gulf	51.9	51.9	46.9/49.9	46.9/49.9 (Some accounts at 43.9)
BP/Suptst	51.9	52.9	49.9	49.9
Sun	51.9	52.9	46.9	49.9 (Most Accounts)
Texaco	51.9	53.9	46.9	48.9
Fina	51.9	53.9	45.9/49.9	45.9/49.9
Calex	—	—	45.9/47.9	45.9/47.9

Source: Document # 120007, Imperial[878]

Since there were fewer independents in the Maritimes and on the Prairies, Imperial was not as concerned about operating on higher margins in these areas.

These margins were substantially below the 16 to 18 cents per gallon that Imperial recognized as being required for its branded operations. Thus Imperial was willing to 'give up near term profits' in order to maintain its market share and to counter the independents. The following excerpt of the instructions issued by the Assistant General Manager (Marketing) to the Manager of Esso brand operations makes it clear that profitability was to be sacrificed by the use of consignment operations. In discussing the actions to be taken with the Esso brand, it was stated:

> "Naturally, this objective needs to be more specific. As a starting point, we should maintain share in this segment and we have been prepared to give up near term profits to do so."[1]
>
> (Document # 119984, May 31, 1973, Imperial, emphasis added)[880]

The reason Imperial expected to make short-term losses by adjusting its branded price downwards to a 4 cents per gallon differential with the independents was that this did not reflect the relative efficiencies of the two systems. In a 1972 study, Imperial concluded that the cost differential between supply to independents and to its own dealers was some 7.56 cents per gallon:

> "Imperial has certain costs attributable to its company owned service station operation in the Toronto market. These costs for the gasoline segment only at a 300M gallons outlet from the point of pick-up at the Finch Avenue rack can be stated in c.p.g. as follows:

National advertising	0.60 c.p.g.
Wholesale accounting	0.18 c.p.g.
Distribution to outlet	0.50 c.p.g.
Admin. and Field selling	1.21 c.p.g.
Field Promotion	0.17 c.p.g.
Facility Expense	0.31 c.p.g.
Retail accounting (net)	0.19 c.p.g.
Sub-Total	*3.16 c.p.g.*
Facility Capital	*3.20 c.p.g.*
Working Capital	*0.30 c.p.g.*
Total	*6.66 c.p.g.*

> "The retail accounting net expense includes credits for past due accounts, revolving credit, etc. If these are excluded an amount of 0.90 c.p.g. can be added to the total resulting in a cost differential of 7.56 c.p.g. It seems to me that we could make an offering to a branded dealer excluding the majority of these charges if we wished to discontinue many of these added services.

---

1. Mr. Wisener testified that his reference to being prepared "to give up near term profits" referred to "a situation where we were on consignment" (Toronto Hearings, 1975)[879]

"Looking at the Detroit market as of this date using Platt's as a basis, the following is noted:

D.T.W. Detroit (Can.¢/Imp. Gal.) 21.50 c.p.g. Jobber Rack Price (Can.¢/Imp. Gal) 15.30 c.p.g. Jobber Margin (Can.¢/Imp. Gal.) 6.20 c.p.g.

"From this it would seem that the U.S. jobber in this area operates on a closer margin than his Canadian counterpart. Detroit is a hot bed of price cutting and this may reflect an attempt by the majors to cut back on jobber margins by recently reducing the D.T.W. price and cutting back on support."

(Document # 119396-7, February 21, 1972, Imperial)[881]

In April 1973, a similar exercise was performed that calculated the difference between the costs to Imperial of a "sale of unbranded gasoline to a jobber against the sale of product to an Esso lessee" (Documents # 118642-3).[882] These were listed as follows:

"Expenses

Product delivery	.5¢/G
Advertising and Promotion	1.0
Accounting and Credit	1.0
Administration and Selling	1.2
Sales Tax	.8
	4.5¢/G
Service Station Capital	3.5¢
Total Cost difference	8.0¢/G"

(Document # 118643, April 23, 1973, Imperial)[883]

Once again, this indicates a recognition by Imperial of some 8 cents per gallon between a cost-based wholesale price for independents and for its own dealer network.

In order to translate this to an appropriate differential at the retail level, a retail margin would have to be added for the Brand and wholesale/retail costs added for the independent. Imperial's own retail margin was about 10 cents per gallon making the retail price some 18 cents above the independents' acquisition costs. Since Imperial was positioning Esso at 4 cents per gallon above the major private brands the relevant comparison is to this group. In 1970, Imperial estimated the "normal private brander" to have a wholesale/ retail margin of 11.1 cents per gallon (Document # 120066).[884] This would have justified a 6.4 cents per gallon cost-based spread at retail between the Esso brand and this class of independent. In 1972, Imperial calculated the wholesale/ retail costs of Canadian Tire — one of the largest independents and, therefore, the segment at which Imperial was aiming — as 8.6 cents per gallon (Document # 179976).[885] This would have justified a 9.4 cents per gallon cost-based spread at retail between the Esso brand and this class of private brander. In both cases the 4 cent, margin envisaged by the Ontario strategy was well below what Imperial recognized as being cost justified.

These estimates use Imperial's calculation of the difference between the costs of sales to unbranded jobbers and its own dealer network. The importance of Imperial's second and third brands in their predatory strategy requires that consideration also be given to the costs of its debranded operations. Table 40 presents a comparison of "actual wholesale market price" to a wholesale cost "buildup for each channel based upon costs plus an 8% return on capital employed" (Document # 118899).[886] It shows that there was essentially no difference between the wholesale costs of third brand direct operation and Econo direct operation and that the wholesale costs of each ranged from just under 3 cents per gallon to 4.6 cents per gallon below that of the Esso branded operations. Econo was expected to operate on a 7 cents per gallon margin (Document # IGDS 227),[887] while Esso unsupported branded retail margins were about 10.5 cents per gallon for 1971 and the first six months of 1972 were about 10.5 cents per gallon (Document # 180345).[888] Therefore another 3 cents would have to be added to the differential at wholesale to give a cost-based differential at retail between the Esso brand and Econo of between 6 cents per gallon to 7.6 cents per gallon. In light of these figures, Imperial's 2 cents per gallon differential underpriced its brands relative to its second brand network. Therefore, on either criterion, the consignment pricing strategy subsidized the brand heavily in order to counter the growth of the independent marketers.

TABLE 40

COMPARISON OF IMPERIAL WHOLESALE COST TO WHOLESALE MARKET PRICE (1973)
(¢/gal.)

	Pool Gasoline (EX Fed. Sales Tax) cpg.		
Type of Imperial Station	*Wholesale Full Cost Plus 8%*	*Actual Wholesale Market Price*	*Difference*
Esso Lessee	23.70	23.20	-.50
Esso Dealer	22.50	23.20	+.70
Esso Direct Operation	24.10	23.20	-.90
Econo Direct Operation	19.50	19.70	+.20
Third Brand Direct Operation	19.65	19.60	-.05
Third Brand Dealer	17.55	18.00	+.45
Jobber	15.80	15.80	—

Source: Document # 118899, Imperial[889]

Imperial recognized that its strategy of narrowing the unbranded/branded price differential and the development of second and third brand networks would 'sacrifice return' and result in near 'zero' profitability. For instance, in the background study developed for the Ontario strategy, it was predicted that automotive profits would have to be sacrificed:

> "The growth objective is to maximize mogas sales at adequate return levels to the total downstream. This may lead Automotive to sacrifice return for the benefit of the downstream as a whole."
>
> (Document # 118397, March 9, 1972, Imperial)[890]

The same result was predicted for the Quebec region. In late 1972, a report prepared for the Executive Committee of the Board predicted profits would be "close to zero":

> "Results
>
> — Hold share of major brand segment. *Expect short term 3 year loss position to Shell, Gulf and Texaco.* Profit in both Esso and Champlain will be close to zero in the new term due to heavy price investment. Recovery begins in 1975. Growth in both brands."
>
> (Document # IGDS 1181, December 21, 1972, Imperial, emphasis added)[891]

The objective of this strategy was to contain the independents. By reducing margins but essentially offering the same branded service, Imperial recognized that independent growth would be held in check. The 1972 study of the Ontario market noted:

> "In short, we have set ourselves a target of substantial narrowing of the major brand W/R margins in order *to restrain discount brand growth.*"
>
> (Document # 118401, March 9, 1972, Imperial, emphasis added)[892]

Not only did Imperial intend to restrict the growth of the independent discounters by reducing margins, but it also foresaw that its pricing policy would severely affect some independents. The Ontario strategy study voiced the opinion that the lowest discounters would be the ones most affected by this policy:

> "a) At a 2¢ differential from the majors, the clean price-off outlets will not grow significantly.
>
> The differential is currently 5¢ to 8¢.
>
> To be competitive, from a price point of view, the retail price at major outlets must therefore be reduced from 3¢ to 6¢ from its current level.
>
> . . .
>
> b) The 'price-off' dirty will not prevail when the market is price competitive.
>
> c) *In attacking the prime target, the 'price-off' clean outlet, we affect others.*"
>
> (Document # 179143, September 27, 1971, Imperial, emphasis added)[893]

The reason Imperial predicted independents would be affected was that investment returns for the independents would be reduced. For instance, narrowing the price differential between major brands and independents was predicted to decrease Canadian Tire's imputed rate of return from 25 per cent to 12 per cent (Document # 179980);[894] a smaller independent like Arrow was expected to suffer a fall from 13 per cent to 6 per cent (Document # 179980).[895] The effect on independents whose costs were somewhat higher to begin with because they did not have the same volume economies would have been even more drastic. In turn, Imperial predicted that this would lead to withdrawal of some of the independent marketers in the "medium term". This appreciation of the intended effect is outlined in a 1972 document that stressed that the objective of a reduced differential between the major brand and the discount brand would lead to "competitive disinvestment":

> "At this price level, discount volume growth will be retained and there will be significant competitive disinvestment within the medium term."
>
> (Document # 118383, April 5, 1972, Imperial)[896]

Therefore Imperial sacrificed profitability in its marketing network in order to 'restrain' discount brand growth, all the while recognizing that 'competitive disinvestment' would occur.

Thus consignment was used by Imperial to discipline independent marketers who attempted to "maintain competitive price advantages of a size which others, including Imperial, were not prepared to cede" (Document # 118995)[897]. The disciplinary intent of Imperial's consignment programme is also suggested by the temporary nature of this instrument.[1]

While Imperial used both a "voluntary consignment commission plan" (Document # 118996)[899] or "consignment arrangement" (Document # 118991)[900] to support lower prices against independents, these programmes were not intended to lower prices permanently. An Imperial press release prepared in response to the Morrow Commission of British Columbia that equated consignment selling to resale price maintenance makes this clear:

> "On consignment selling, the report takes the attitude that it is just as bad as resale price maintenance, which is illegal. In our opinion the two are quite different, both in method and in purpose. Resale price maintenance is designed to keep retail prices up. In the gasoline market, consignment was introduced *as a temporary measure to protect dealers when prices were abnormally low*, but *when the need disappears, so does the consignment*. We would welcome an end to the conditions which lead to consignment."
>
> (Document # 131864, April 5, 1966, Imperial emphasis added)[901]

1. Temporary, in light of Imperial's actions, should be defined as the length of time necessary to return prices to what Imperial defined as 'normal'. For instance, Imperial used consignment continuously for several years in Ontario during the early nineteen sixties (Document # 118987-8).[898] Similarly it expected to make losses with its three-tiered strategy for several years and it predicted that disinvestment would occur in the "medium" term.

The short-term nature of its consignment programme was confirmed by testimony from the Assistant General Manager, Marketing Department:

"Q. Are you familiar with the use of consignment selling?

A. Yes, I am.

Q. Was that used?

A. It was used on a short-term basis. The other steps that I was referring to were on a long-term nature and consignment was a short-term nature really designed to support the dealer.

Q. In what sort of areas?

A. In situations where the price was depressed.

. . .

Q. If upon introduction of one of these things, let us say, consignment selling, after some time if the discounting activity in that particular area stopped what would Imperial do?

A. It would remove consignment. This was a mutual agreement."

(Testimony of Mr. G.R. Wisener, Assistant General Manager, Marketing Department, Imperial, Toronto Hearings 1975, Vol. XI, pp. 1150-3)[902]

The Executive Vice-President also testified that consignment was used with the expectation that prices would return to their normal level:

"Q. Then I am trying to place consignment as to when it is used.

A. Consignment generally is used where there has been an area where price has been more or less normal, and for competitive reasons the prices would drop very substantially, but with the expectation that by and large this cyclical pattern would return prices back where — upwards and under these conditions it is the short-term solution which would be the use of consignment but in the longer term it is not a solution.

Q. Dealing with the short-term solution then, once the prices did return to normal would the use of consignment stop?

A. The use of consignment is the choice of the dealer and he may choose not to go back to his normal relationship. He would stay on the consignment agreement and he might, for example, anticipate circumstances erupting again and he may choose to stay on, but by and large the answer to your question is yes — that once they come out of it that most of the dealers, if not all, would elect to go off consignment. It would be to his advantage."

(Testimony of Mr. R.G. Reid, President and Director, (Previously Executive Vice-President), Imperial, Toronto Hearings 1975, Vol. X, pp. 1107-8)[903]

The consignment arrangements implemented in 1972-73 to bring Imperial's branded price to within 4 cents of the major independents was also recognized as being a "short-term solution". This was envisaged as being a

"temporary" measure which would not solve Imperial's "problem of higher costs". The Executive Vice-President stated:

"A glaring weakness in our major brand strategy is that of how we are indeed going to reduce the wholesale/retail margin without taking the full cost ourselves. Salary operation of a part of our outlets is, of course, not a solution. The use of agents or agency agreements may be required but may not be acceptable. Margin reduction is such a key to our success that I believe some thought should be given as to how this will come about. Reducing the wholesale/retail margin is no problem but can be extremely costly if it all falls into our bailiwick. Indeed, I can make a case for retail margins continuing to skyrocket as long as the major oil companies are willing to absorb the retail subsidies within the tank wagon price. *The use of consignment and indeed our involvement in London is only a temporary solution at best and cannot be counted upon as a long-term solution.*"

(Document # 118965, May 9, 1973, Imperial, emphasis added)[904]

The Vice-President confirmed that he did not regard consignment as the solution to the lack of competitiveness:

"I guess my point here was that again this is a temporary solution and that in the longer-term basis we had to reduce our costs in order to be competitive at the lower prices and that I would — I guess I remember my letter at the time — I looked upon this as only a temporary solution and not a major solution to the problem of higher costs."

(Testimony of Mr. R.G. Reid, President and Director, [Previously Executive Vice-President], Imperial, Toronto Hearings 1975, Vol. X, p. 1109)[905]

Concomitant with the notion that Imperial's pricing strategy was not justified by cost savings being achieved was Imperial's understanding that it would lead to reduced profitability in the short run. On the same day that the Executive Vice-President noted the inherent contradictions in the automotive strategy, he also wrote a memorandum discussing the effect of the price strategies that had been put into effect. Because of the widespread basis on which branded prices had been lowered, he noted, Imperial would not "recover our full cost pushes for the year 72-73" (Document # 117369).[906]

What is equally important is that the Executive Vice-President stressed that Imperial's strategy really did not deal with its major reason for uncompetitiveness — that of the excessive proliferation of small inefficient stations. Instead, its policy was aimed at increased company control and operation:

"A basic tenet of our strategy is that of stronger retail management and participation. I am sure that this approach will have a positive effect on our volume performance. Indeed I am sure it will give some assistance to the aftermarket and bay productivity. It is another question, though, as to whether it will have a major or even a positive effect on earnings. First, we have to prove that we can retail at lower cost than can a dealer organization. Secondly, we must prove that the added efficiency we might make is of sufficient magnitude to have a real effect on our productivity. *A*

small improvement is not worth the effort. We will be continuing to operate basically the same equipment with basically the same or higher cost and this, of course, does not constitute a solution. Stated in its simplest form an inefficient two-bay high cost outlet remains inefficient and high cost whether it is dealer or company operated."

(Document # 118964, May 9, 1973, Imperial, emphasis added)[907]

One of the other solutions to the immediate problem that was also considered was the implementation of agency agreements — essentially a form of long-term consignment agreement. However, even here, the basic problem was not solved:

"I might state parenthetically that the use of an agency agreement does nothing to improve the system's efficiency but merely reduces the retailer's income."

(Document # 118965, May 9, 1973, Imperial)[908]

This statement implicitly recognized that, while it was possible to exploit the captive dealer network for a short period of time, this was not a viable long term 'solution'. Both of these observations by the Imperial Executive Vice-President stress that Imperial's policy in lowering brand prices in 1972-73 was aimed at that sector of the market providing price competition and thus, was essentially the same as that which had been followed previously. Consignment was first and foremost a disciplinary strategy aimed at returning prices to 'normal' levels.

(e) Summary

Imperial, in the period from 1968 to 1973, used both second brands and consignment type subsidies to control the price competitive independent sector. Its disciplinary policies, like those of the other majors, were aimed at the independents; they were designed as short-term strategies to be withdrawn or de-emphasized once prices had returned to their previous levels. The objective of Imperial was to 'maintain market' share irrespective of the loss of 'near term' profits. It is significant that Imperial designed this strategy around a time horizon of several years. The short-run was defined not in terms of months but of years. Disinvestment by 'competitors' was envisaged for the 'medium term'. Apart from the light this sheds both on the motives of Imperial and the time horizon adopted for the policy, the way in which the policy was implemented shows how Imperial interacted with the other majors to ensure the widespread adoption of similar policies. Imperial recognized it was the price leader in the industry.[1] For instance, upon recommending an increase in wholesale prices in

1. While recognizing it was the leader, Imperial, on certain occasions waited for others to make the first move:

"If & when domestic crude prices are increased we recommend a recovery in overhead product prices. Assuming a 25¢/Bbl increase we would propose a 1¢/gal increase across domestic crude circuit. *WOULD LIKE TO WAIT FOR OTHERS*" (Document # 120278)[909]

1973, Imperial noted "competition will follow" (Document # 119988).[910] Its leadership role also extended to the use of policies such as consignment. Once again, in dealing with the 1973 period, Imperial observed: "If competition continue to follow, will begin to remove consignment week of June 18" (Document # 120011).[911]

Because of this role, Imperial recognized that, in designing its response to the independent sector, it would have to act so as not to cause a general reduction in prices. In preparing its second brand strategy, it decided that the brand could not be used because of this very problem. If 'Imperial' or 'Esso' was used, the other majors would probably meet the price of the second brands. Major competitors, it recognized, would not allow an "Esso Econo with discount pricing to go unchallenged; nor would conventional Esso dealers" do the same (Document # 119762).[912] Similarly, Imperial noted that an Imperial-Econo station offering gasoline at "several cents below 'full' market price would not be tolerated by major competitors or by Imperial-Esso sales associates" (Document # 119763).[913]

Recognizing this fact, Imperial adopted second brand policies. In doing so, however, Imperial was careful to design a strategy that the other majors would comprehend. In discussing the pricing strategy for Esso, Champlain, Econo, and Gain, the "Pricing Committee Objectives" were "to provide competition with a clear cut view of each brand's pricing posture so that they will not react against each one" (Document # 119970).[914] Imperial, therefore, evidenced an understanding that communication of its intent was necessary in order to assure conformity of action. As in the early nineteen sixties, the fact that the majors adopted similar or parallel disciplinary activities in the early nineteen seventies was the result of a careful nurturing of a general understanding as to how the majors could restrict the competitive impact of the independent sector.

The manner in which the majors reached this understanding is evident from the preceding sections. Shell, for instance, not only observed Imperial's actions but correctly understood their intent. Imperial, Shell noted, used second brands to "put the squeeze on the Unbrandeds through higher wholesale prices, combined with volume dilution in the market place" (Document # 34428).[915] Shell also observed that Esso set its second brand prices below the level at which its wholesale prices were forcing the unbrandeds to post prices (Document # 27087).[916] What is significant is that the other majors then chose to support what they perceived Imperial's objectives to have been. Shell chose to support Imperial with the wholesale/ retail squeeze in 1973. Examples from Texaco show similar behaviour in 1968. Gulf also evaluated the intent of Imperial as disciplinary and implemented a set of policies that supported the objectives that were common to the majors. Therefore, whether it is the actions of the leaders

or the followers that are examined, the desire to contribute to a common objective and to develop these policies so as to ensure a complementary reaction from other majors is evident.

I. *The Majors' Wholesale Policies and Their Implementation of a 'Squeeze' Aimed at the Independents*

1. *Introduction*

Earlier sections of this paper describe the major oil companies' marketing practices. They demonstrate that these policies were aimed at eliminating and restricting the spread of price competition that had originated in the independent marketing sector. The majors, when faced with independent marketers whom they viewed as possessing a less costly distribution system, adopted a set of disciplinary price discrimination schemes — using temporary allowances, consignment and second brands — to protect their branded distribution system. Each scheme served to discipline the independents by lowering the majors' retail price. Since all the major marketers were vertically integrated into refining, their policies at the wholesale level need to be examined as well; for the majors could equally have disciplined the independents by forcing the independents' wholesale prices upwards at the same time as the majors reduced or held their own retail prices constant.

Disciplinary action at either the wholesale or the retail level would have been equally effective in squeezing the independents' margins. However, the ease with which each could be implemented was not the same. Each required analogous behaviour on the part of more than one major to be effective. But because retail prices are posted publicly and wholesale prices are not as widely available, coordinated action at the wholesale level would have been more difficult to achieve. In addition, coordination among the majors at the wholesale level might not always have been sufficient to increase wholesale prices. To the extent that alternate supplies were available from offshore sources, then withdrawing supplies from the independent sector or increasing prices to them would have been ineffective except in the short run.

The preconditions necessary for making the policy of increasing wholesale prices into an effective anti-competitive instrument were fulfilled in the early nineteen seventies. Alternative sources of offshore supply were significantly reduced.[1] This change increased the discretionary power available to the domestic refining sector. This power then was exploited by the majors to increase wholesale prices to the independent sector. The following examples

1. The National Energy Board (N.E.B.) licensing scheme was implemented in 1970 and marked the first turning point. The OPEC embargo and the dramatic price increases in 1973 marked the second turning point.

illustrate how the majors used their wholesale pricing policies to squeeze the independents. In each case, where a squeeze was considered or implemented, the majors also used consignment, temporary allowances, and/or second brands to keep retail prices down while they raised wholesale prices.

Thus this section demonstrates that, where conditions permitted, the majors used their control over refining to reinforce the disciplinary retailing policies that they were directing against the independents. The fact that their wholesale policies were part of a larger strategy to discipline the independents is significant because it provides additional support for the contention that the objective of their wholesale strategy was predatory. An increase in wholesale prices might simply be a legitimate reaction to changed business conditions. The policy of wholesale price increases to the independent sector was employed primarily in the early nineteen seventies, and there is no doubt that there was a tightening of the market in this period. In particular, there was a reduction in access to offshore product because of the implementation of import licensing. Without the predatory evidence from the retail side, and the deliberate coordination of wholesale and retail policies, the disciplinary intent of the wholesale policies would be more difficult to disentangle from other explanations of the majors' behaviour.

This section also shows how the majors coordinated their wholesale policies much as they had coordinated their retailing policies. In the section of this paper dealing with marketing, it was demonstrated that once the leading firm in the industry — Imperial — revealed its course of action against the independents, then the other major marketers, recognizing the purpose of the action, adopted policies that reinforced those of Imperial. A similar pattern can be found in the supporting action taken at the wholesale level in the Ontario refining sector.

It was this type of supporting or parallel behaviour that served to create the monopolistic conditions that worked to the detriment of the public interest. It is often argued that parallel behaviour emanating from an oligopoly is innocent because it is inevitable. Since no other course of action, it is argued, is possible, guilt cannot be ascribed to such behaviour. The fallacy of this position is obvious in the context of the examples described herein. They illustrate that the key companies, in the full knowledge that each was doing the same and that success required each to do so, adopted a course of action that was aimed at reducing competition. Other policies were available that would not have done so. Actions were taken in full knowledge of their intended effects and were in no sense a natural outcome of a non-rivalrous situation.

2. *The Price Squeeze of 1967-68*

Although the best conditions for using a wholesale price increase to squeeze the independents developed in the early nineteen seventies, the majors had employed this strategy at an earlier date.

The events of late 1967 and early 1968 illustrate how, during a general price increase, the majors coordinated their activities so as to squeeze the unbranded independents. They emphasize not only that the policies which were adopted were similar but also that they were consciously chosen to be so. As such, they confirm that, in refining, the majors could coordinate their predatory activity with an efficiency equal to that already demonstrated in the retailing sector.

On February 7, 1968, Texaco's General Manager Sales, writing on "THE ONTARIO PRICE SITUATION", described the result of Imperial, Gulf, and Shell having moved their dealer tankwagon prices upward in a number of price zones in the Ontario market:

> "*NOTE*: In the case of B.A. and Shell, they have raised the dealer tank wagon price in accordance with the attached schedule. In Shell's case they wrote their dealer organization suggesting that the dealer add the amount of the increase to his present retail price, or they suggested a new retail price to him. This has resulted in a scrambled set of retail prices on the part of Shell and B.A. where some dealers have moved their retail price up by the amount of the tank wagon increase whereas others have not."
>
> (Document # 46283, February 7, 1968, Texaco)[917]

Imperial's strategy was discussed further by Texaco. Imperial had increased the dealer tankwagon price, but, at the same time, had given a special allowance to those dealers who agreed to remain at previous retail price levels. The same memorandum noted:

> "In Imperial's case, they have suggested a certain retail price to the dealer at the same time they advised him of the increase in the dealer tank wagon price and if the dealer posted this new retail price, they kept him 'whole' by putting in a special allowance."
>
> (Document # 46283, February 7, 1968, Texaco)[918]

The effect of Imperial's price changes was to squeeze unbranded margins. When a supply contract between the unbrandeds and the major suppliers stipulated the price on the basis of a certain discount off the dealer tankwagon price (D.T.W.),[1] an increase in the dealer tankwagon price, accompanied by constant retail prices, would have reduced the margin of those independents who had this type of supply contract. In addition to its allowance programme, Imperial also changed the boundaries of some of its price zones and this put additional pressure on the jobbers (Document # 46284).[920] Texaco noted that both actions had the effect of squeezing the independents:

> "*Imperial's action has made it very difficult for the private brand jobber who has been buying on a fixed discount off dealer tank wagon*. In other words, they have

---

1. Imperial indicated that most "jobber and industrial contracts escalate with product postings." (Document # 116177)[919]

> moved the cost of the jobber's product up by .008 and forced the retail down by .01, thereby shrinking the jobber's margin by .018.
>
> "Imperial have also changed some of the price zones which has put further pressure on the jobbers, and this is illustrated on the new price zone map."
>
> (Document # 46284, February 7, 1968, Texaco, emphasis added)[921]

By February 12th, Texaco noted that Imperial had "40% of their dealers selling at .459 [the original retail price]" (Document # 46282).[922] Texaco decided that it would probably "follow IO's increase in D.T.W. on mogas *and* their special allowance of .008 if sold at 45.9" (Document # 46282).[923] In other words, Texaco consciously chose to follow Imperial's policy which, it fully recognized, would serve to squeeze the independents.

Imperial's strategy to squeeze the independents was not confined to the Ontario market — it achieved a similar goal on the Prairies using allowances. In a discussion of plans to remove a .5 cent allowance on gasoline in Edmonton on July 1, 1968, Imperial noted that with its allowance system in effect the independents were being squeezed:

> "1) *Coop's, primary competition, are experiencing cost-price squeeze and will follow price moves by Imperial.*
>
> 2) Last price move January 1, 1968, was followed by major and Coop competition — little customer shifting."
>
> (Document # 123447, May 22, 1969, Imperial, emphasis added)[924]

Texaco was not the only major to adopt pricing tactics similar to Imperial. Shell did so as well. The Vice-President of Shell Marketing, in discussing events in 1968 stated:

> "You will recall that in January, 1968, we increased the tank wagon price of motor gasoline in Ontario by 0.8¢ per gallon. Subsequent competitive activity required that we forego the benefits of this price increase and to meet the competition we provided a subsidy of 0.8¢ per gallon to those dealers who would agree to sell at the pump for not more than 47.9¢ per gallon (regular gasoline)."
>
> (Document # 32818, June 25, 1969, Shell)[925]

Thus Shell too adopted a policy that, in Texaco's words, was making it "very difficult for the private brand jobber who has been buying on a fixed discount off dealer tank wagon" (Document # 46284).[926] Moreover, Shell, like Texaco, understood the effects of its actions. Throughout this period, Shell used temporary allowances, consignment, and second brands to 'fight' the unbrandeds. Shell's retail policies were intended to protect its brand, discourage new entry, and lead independents' prices up.

Shell also recognized that an equally effective manner of slowing the growth of independents was to raise their wholesale prices. In an October, 1971 memorandum written by the General Manager of Central Marketing Region to

the General Manager of Shell Marketing, it was noted that the ultimate solution to the unbranded problem was to raise the wholesale price that this sector paid for its product—*a position that Shell had held for many years* (Document # 30704).[927] Other policies for dealing with the independent were outlined by the General Manager. These were discarded as being less effective than an increase in wholesale prices. For instance, in discussing temporary allowances, the evaluation characterized this instrument as being extremely costly:

> "As we discussed some days ago, we have been experimenting with break even curves in an effort to get a perspective on retail pricing TVA's and the volume relationship.
>
> . . .
>
> "It will be apparent that very large increases in volume are necessary to recover even small subsidies in TVA's."
>
> (Document # 30702, October 13, 1971, Shell)[928]

Advertising and promotions were also described as incapable of offsetting the price advantage of independents except in the short run. In discussing promotions, the same memorandum noted:

> "All of these have worked for a time, but a constant price differential on the basic commodity that the motorist wants is hard to offset by promotions and with the exception of car washes (a price device actually), they have not really evinced any great staying power."
>
> (Document # 30703, October 13, 1971, Shell)[929]

Similarly, the analysis went on to note that while the majors' second brands were containing the unbrandeds, they had not eliminated them completely. Therefore, the only position left was that which had been "held for so many years." Prices to the unbrandeds, had to be increased at the wholesale level:

> "*Almost inescapably we come full circle to the position we held for so many years that sales to unbranded marketers at extended margins are self-defeating. This leads us to the conclusion that the 'price restoration' that would be a positive solution is a 4 cent/gallon increase at the rack for all private brand pick-ups.* It goes without saying that the immediate result would be a total loss of all private brand business. Long range, if the 'restoration' held, it would create a new set of retail marketing conditions."
>
> (Document # 30704, October 13, 1971, Shell, emphasis added)[930]

In light of these comments by the General Manager of Shell's Central Marketing Region, it may be concluded that Shell's actions in following Imperial and Texaco in squeezing the unbrandeds was done with full knowledge of the consequences.

Even though it is clear that the strategy of both Shell and Texaco in 1968 was similar to that of Imperial, it might be argued that the two followers

had no choice but to imitate the leader. However, this was not the case, as Texaco itself recognized, it was not necessary to implement the same policy as Imperial; however, it knew that if it did, then it would accomplish what Imperial had set out to do and establish control over its dealers:

> "We could leave our tank wagon where it is and save some accounting problems and extra paper work *except* that we then lose the 'control' factor on the retail pricing on our retailers which Imperial Oil are getting by the simple device of raising their tank wagon 80 points and then giving it back to dealers who price 'right' (in Imperial's opinion) for the area in which they market. *Certainly this 'control' feature is valuable, and therefore we recommend that as quickly as possible we follow Imperial Oil's practices exactly, area by area.*"
>
> (Document # 46277, February 14, 1968, Texaco, emphasis added in last sentence)[931]

Control, of course, was essential if the squeeze was to be implemented only in those areas where independents were a force.

Gulf, as well as other firms, followed Imperial's pricing actions in the Ontario market during this time period. Gulf observed that in 1969 Imperial was continuing a similar strategy of raising the dealer tankwagon price and implementing a subsidy programme in certain price sensitive areas. In 1969, Imperial had increased the posted prices by 6/10 cent per gallon and at the same time re-introduced a subsidy of 6/10 cent. During this period, Gulf was following Imperial Oil's price changes. Referring to Imperial's price move in 1969, a Gulf official stated:

> "IN LINE WITH *YOUR INSTRUCTIONS TO CHANGE OUR POSTED PRICES* TO COINCIDE WITH THOSE OF IMPERIAL OIL, OUR INFORMATION ON THE CHANGES INSTITUTED BY IMPERIAL IS AS FOLLOWS:
>
> (1) POSTED PRICE OF GASOLINE, MARINE WHITE AND DIESEL *TO ALL CLASSES OF TRADE* HAVE BEEN INCREASED $0.0060 PER GALLON EFFECTIVE JULY 22ND. THIS COVERS ALL ZONES EXCEPT ZONE 7, 7A, 7B, 8 AND UNZONED AREAS EAST OF NATIONAL OIL POLICY LINE AND THAT AREA SERVICED BY BARRY'S BAY, MATTAWA AND DEEP RIVER.
>
> (2) FURNACE OIL, STOVE OIL AND KEROSENE PRICES TO ALL CLASSES OF TRADE HAVE BEEN INCREASED BY 1¢ PER GALLON EFFECTIVE JULY 24TH IN A NUMBER OF PRICE AREAS. THE EXACT DEFINITION OF THESE ZONES IS STILL NOT CLEAR PARTICULARLY WITH REFERENCE TO EASTERN ONTARIO.
>
> IN VIEW OF THE ABOVE WE ARE PROCEEDING TO INCREASE OUR TANK WAGON PRICES OF GASOLINE, VULCAN AND DIESEL TO ALL CLASSES OF TRADE BY 6/10¢ PER GALLON EFFECTIVE TOMORROW MORNING, JULY 25, 1969."
>
> (Document # 70538, Gulf, July 24, 1969 emphasis added)[932]

Gulf not only followed Imperial's posted price increases, but recommended that they follow Imperial's introduction of subsidies recognizing that these subsidies were aimed at maintaining dealer margins at a maximum of 8.9¢ per gallon above the unbrandeds:

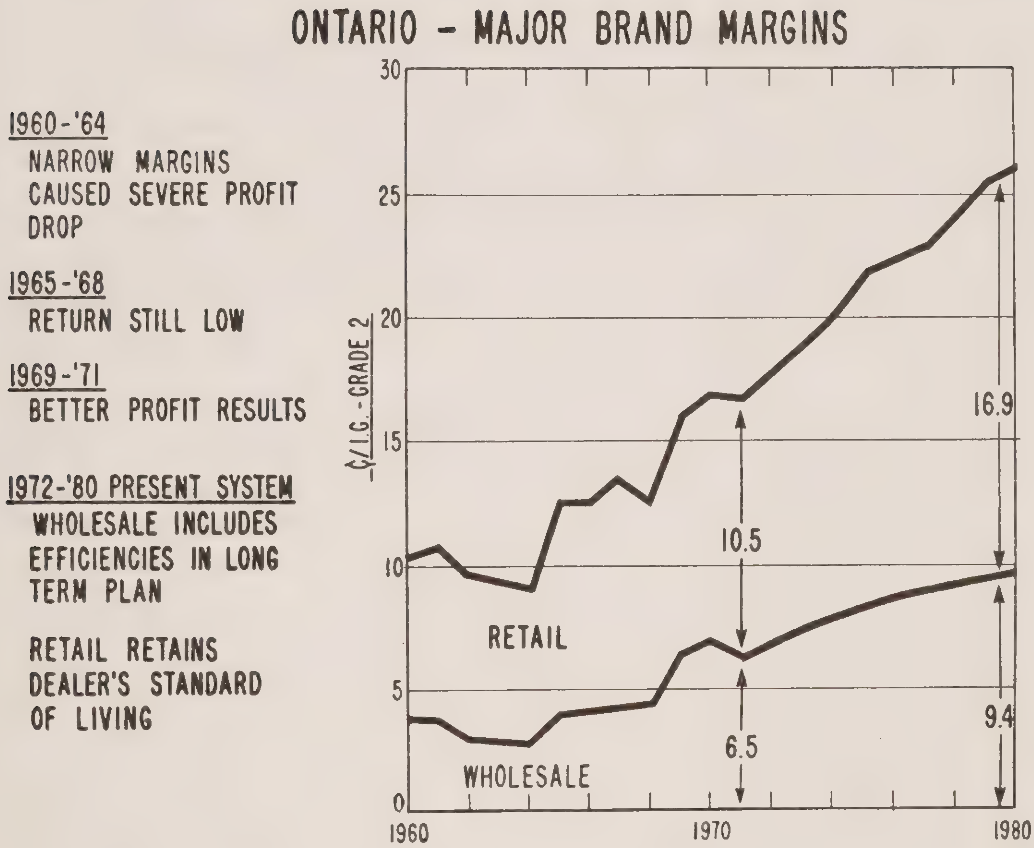
> "WITH REGARD TO DEALER SPREADS, WHILE IMPERIAL OIL HAVE DISCONTINUED THE 8/10¢ PER GALLON SUBSIDY IN ALL AREAS COINCIDENT WITH THE ABOVE, THEY ARE RE-INTRODUCING A SUBSIDY OF 6/10¢ PER GALLON ON GASOLINE TO DEALERS IN CERTAIN PRICE SENSITIVE AREAS APPARENTLY WITH THE AIM OF MAINTAINING A DEALER MARGIN OF 8.9¢ PER GALLON WHERE THE DEALER SETS HIS PUMP PRICE AT NO HIGHER THAN A LEVEL RECOMMENDED BY IMPERIAL OIL. . . .
>
> WE REQUEST AUTHORITY TO INSTITUTE A SIMILAR SUBSIDY OF $0.0060 PER GALLON TO OUR DEALERS IN CERTAIN AREAS TO ENABLE THEM TO MEET LOCAL COMPETITION, AND WHERE WITH THIS SUBSIDY, THE DEALER MARGIN IS NOT IN EXCESS OF 8.9¢ PER GALLON."
>
> (Document # 70539, Gulf, July 24, 1969)[933]

Thus Gulf, like Texaco, closely followed Imperial's pricing policy during this period. Gulf increased their posted prices to all classes of trade while, at the same time, introducing subsidies in certain price sensitive areas.

The importance of these coordinated attempts to squeeze the independent sector must be placed in the context of the price performance of the retail sector at this time. This was the period during the late nineteen sixties when the retail/wholesale margin of major brand gasoline rose rapidly. Figure 25, excerpted from an Imperial study, demonstrates the course of wholesale and retail margins during this period. As is evident, the price rise of early 1968 moved the majors' realizations and their pump prices upwards. This was the beginning of a long upward movement that culminated in 1972.

The price squeeze of 1968, therefore, must be regarded as one of the disciplinary instruments employed to restrict the growth of independents — the tool that was used at the beginning of the price restoration phase that occurred in the mid-nineteen sixties. It was only a temporary tool since, unless some basic change in supply arrangements was brought about, the increase in the wholesale price would not likely have been sustained. Providing that alternate sources of supply were available, with the expiration of their supply contracts, the independents affected by Imperial's, by Texaco's or by Shell's actions could have renegotiated a new wholesale contract that did not specify a fixed discount off what had become an unrealistic dealer tankwagon price. The price squeeze, like the retail instruments, were all strategies adopted by the petroleum industry that permitted it to widen wholesale and retail margins to the high levels achieved in the late nineteen sixties and early nineteen seventies.

FIGURE 25



(Reproduction of Document #179972
'Figure 25' added)

During the next four years — from 1968 to 1972—the chief instruments used by the major marketers were specialized retail price discrimination schemes — temporary allowances, consignment, and second brands. A price squeeze such as was used in 1968 was only useful for a short time because alternative supply for the independents was still available from offshore sources. The events of the early nineteen seventies changed this. First, the National Energy Board, in attempting to control movements of product across the National Oil Policy Line, began to restrict all imports of products and brought them under licence control.[1] Secondly, the crisis of 1973 made offshore product more difficult to find and eliminated a traditional source of supply to independents.

Unlike the United States, Canada does not have a large number of independent refineries. The independent unbranded marketers in Canada generally have relied on imported product or on the large integrated oil companies for their product requirements. As a result of the increased restrictions placed on offshore sources of supply at this time, the independent sector was placed in a position of greater dependence upon the major integrated companies' domestic refineries. This served to decrease the elasticity of demand for domestic refined product and provided the opportunity for the major refiners, if they acted in a similar fashion, to increase the wholesale price that the independents would have to pay.

Before the majors could act to increase wholesale prices, they had to develop a system of harmonizing their activities at the refining level. The high levels of concentration in the refining sector and the nature of the refining swap arrangements facilitated the adoption of simil policies at the wholesale level. As has been described in the refining volume, the majors exchanged information on each other's market plans when refinery exchanges or processing agreements were discussed. This exchange would have contributed to the development of implicit understandings as to what each firm's policies were going to be. One aspect of such informational exchanges involved the extent to which refinery sales would be devoted to outside or third-party sales — in particular, sales to the independents.

An example of the type of understandings developed as a result of these contacts is provided by certain discussions within Gulf. Those discussions related to Gulf's desire to increase the wholesale costs to independent distributors in order to restrict their growth. This had been a Gulf objective since the early half of the nineteen sixties when the private brand distributors first made substantial inroads into the gasoline retail market. At this time, Gulf had reacted by attempting to reduce the wholesale discount granted to this sector. A

1. See the Volume entitled "Overview" for a discussion of the effects of this policy.

1964 Gulf study emphasized that it intended to try to increase the private brands' acquisition costs:

> "... British American's Marketing Department recently enunciated the following policy as to supplying gasoline to private brand distributors and private brand retailers:
>
> '... it will be our policy to develop our retail business through branded representation. Consistent with this, we will progressively reduce discounts to P.B.D.'s and P.B.R.'s in order not to give them a competitive advantage over our branded retailers.'
>
> — from Marketing Policy and Procedure Manual Policy No. 1240, March 30, 1964."
>
> (Document # 58967A-8A, June, 1964, Gulf)[934]

It has already been demonstrated in the marketing section that the lower retail prices that the unbrandeds charged were not the result of their having received discounts that were too high; rather their wholesale and retail margins were substantially less than those of the majors. Gulf's policy was, therefore, aimed at restricting the growth of independents by increasing the product supply costs of the sector so as to reduce the cost advantage enjoyed by the independents on the distribution side.

In 1968, Gulf again addressed itself to the possibility of increasing the wholesale prices paid by independents. This was the same period in which Imperial, Texaco and Shell adopted identical policies to squeeze the independents. The following excerpts from Gulf's Product Advisory Group show that Gulf was willing to increase wholesale prices even though it recognized success would depend upon the other majors following:

> "Atlantic Division recommended that in view of the small volumes of long discount 88 gasoline busines [sic], we should try a minimum net-back of 13.0¢/gallon in the hope of influencing the discounting practices of the industry."
>
> (Document # 65411, February 9, 1968, Gulf)[935]
>
> "Must find a way of realizing more for the product we have available for sale. Other Companies must feel the same way particularly in the long discount area.
>
> "The Product Pricing Advisory Group will recommend pricing policies which when accepted will apply to all marketing arms of the Company. This will probably include minimum netbacks (floor prices) and guidelines for volume discounts. . . .
>
> "Other Companies seem to want to eliminate or reduce the very long discounts. *The time is opportune and we propose to take the lead and see if others follow.*"
>
> (Document # 65406, February 19, 1968, Gulf, emphasis added)[936]
>
> "The Company is willing to take some risks in taking the lead in reducing discounts. The time appears to be opportune for such a move."
>
> (Document # 65408, February 19, 1968, Gulf)[937]

> "Mr. Lockhart indicated all Companies would have to follow our lead to be successful. Also cautioned that moving up too fast may cause other investigations."
>
> (Document # 65409, February 19, 1968, Gulf)[938]

These documents indicate that Gulf felt it could influence the market by leading prices upwards. Its willingness to do so was based on a detailed understanding of the objectives of the other majors:

> "Mr. Carey outlined situation in the Maritimes — concerned about long discounts — *others concerned too* — no sign of change."
>
> (Document # 65411, February 9, 1968, Gulf, emphasis added)[939]
>
> "Industry refineries are generally at or near capacity. . . .
>
> "Generally industry would like to reduce or eliminate these large discounts."
>
> (Document # 65408, February 19, 1968, Gulf)[940]

The detail on the objectives of other majors that was possessed by Gulf, suggests discussions were held with other companies. For instance, the following document indicates that Gulf knew the time horizon of Imperial's policy:

> "Mr. J. Carey outlined the market environment in the Maritimes. Imperial Oil are going to reduce discounts. Unhappy with market. *Will try a few months*. British American Oil has lost business just recently. Texaco never bids unless they make a profit. They are not satisfied with their share of the market. Fina has some uncertainty but wants more realistic prices. Irving felt the same — something has to be done."
>
> (Document # 65412, February 8, 1968, Gulf, emphasis added)[941]

More noteworthy is the following document that also suggests discussions took place as to the nature of rebates paid via the free installation of equipment:

> "Imperial Oil are not loaning equipment or paying installation or service if 25,000 or less. British American Oil will follow. *Have not talked to Shell Oil*."
>
> (Document # 65412, February 8, 1968, Gulf, emphasis added)[942]

These excerpts suggest that inter-firm communications were sufficient to permit a degree of mutual understanding to develop among refiners that would have facilitated the harmonization of wholesale policies. The nature of the refining industry did not require all refiners to coordinate their activities in order to raise wholesale prices. Because of the discontinuity of investment in refining facilities, new refineries tend to be filled out with sales to third parties. Therefore, since sales to independents were not usually evenly distributed across refiners, only a few refiners in a particular region would have had to harmonize their policies if wholesale prices were to be forced upwards. In some cases, sales to the independent sector were so concentrated in one refinery that one firm could significantly influence the wholesale price to the independent sector by its own actions. Of course, it should be recognized that action by one or by a small

number of firms to withdraw supply or to force up wholesale prices depended for its success upon there being no alternative sources of supply. An alternate source exists when other refiners have excess capacity. In the cases to be discussed, excess refinery capacity and sales to independents tended to be concentrated in the same firms. Therefore the preconditions necessary for a squeeze from the wholesale side existed.

3. *Ontario in the Early Nineteen Seventies*

In Ontario, Shell and Imperial Oil led the majors' predatory attack from the retail side. By the early nineteen seventies, these two companies controlled most of the surplus refining capacity; they also led the squeeze against the independents in the wholesale sector. In the following excerpt Shell describes the opportunity this provided for the majors to raise wholesale prices in order to squeeze the margins of the independents. Because imports were being cut back and between them Imperial and Shell controlled excess capacity, the ability of the two majors to increase wholesale prices had substantially increased:

> "Import levels increased from 3.9 MB/D (3% of total demand) to 9.5 MB/D in 1970 (6% of total demand) then dropped back to about 5.6 MB/D in 1971 (curtailment of imported gasolines).
>
> "Surplus capacity is diminishing quite rapidly
>
> 1967 surplus 22 MB/D (17% of total Demand)1972 surplus 7 MB/D (4% of total Demand)
>
> "Majority of current surplus now in hands of Shell and Imperial (Esso). *Should facilitate our efforts to lead wholesale prices up in order to lower margins available to Independent Pribrand supplier/operators*."
>
> (Document # 30777, Undated, Shell, emphasis added)[943]

Previous sections have demonstrated that Shell, even though it recognized the lower cost levels of the independents (Document # 34520),[944] attempted to discipline these companies in order to restore higher branded prices. At the same time as Shell was admitting that cost reductions were required if Shell was to match the independents' costs, it outlined an alternative to restrict this sector — higher wholesale prices for the independent marketers:

> "AS YOU CAN SEE, DEALER MARGINS, REDUCED INVESTMENT CHARGE MANAGEMENT, CREDIT CARD AND ADVERTISING APPEAR TO OFFER THE BEST OPPORTUNITIES. *WE ALSO HOPE TO SEE THE INDEPENDENTS COSTS INCREASE THROUGH HIGHER REFINERY GATE PRICES AND REDUCTION OF THROUGHPUT PER OUTLET*."
>
> (Document # 34521, Undated, Shell)[945]

It was not the case that Shell felt prices charged the independent sector were unreasonably low. Shell recognized that independents had no advantage over their own marketing organization in this respect:

> "*INDEPENDENTS PRODUCT COST IS ABOUT THE SAME LEVEL* AS OUR TRANSFER PRICE."
>
> (Document # 3477l, Undated, Shell)[946]

Nevertheless, Shell's policy was to use whatever discretionary power it had at the refining level to push up prices to independents. The same study that stressed the independents were obtaining product at about the same price as Shell's marketing division, went on to state that wholesale price increases would be harmonized with both temporary allowance and private brand policy to force prices upward:

> "WE WILL CONTINUE TO TRY TO LEAD PRICES UPWARD
>
> — THROUGH REMOVAL OF BRANDED SUBSIDIARIES [SUBSIDIES]
>
> — PRICE LEADERSHIP IN THE PRIBRAND SECTOR
>
> — *INCREASING WHOLESALE PRICES TO PRIBRAND INDEPENDENTS*."
>
> (Document # 34775, Undated, Shell, emphasis added)[947]

Thus Shell's wholesale policy was part of a two-pronged attack on the independents.

Throughout this period, Shell proceeded, whenever the opportunity arose, to implement this policy. It carefully re-evaluated not only its contracts with independents but also its contracts with other majors and regional marketers that, because of resales, affected the independent market. Texaco, for instance, was dependent upon the other majors in Ontario for part of its product requirements, and at the same time still supplied several large independents, e.g., Canadian Tire. Shell adopted the policy of increasing Texaco's processing fee in order to force it out of the independent market or to influence the prices it charged therein. In evaluating a processing arrangement with Texaco, Shell recognized that it had "an opportunity to tighten up the Ontario market":

> "*It would appear that if Gulf and BP are near capacity and Esso continue their past reluctances to sell to Texaco (especially at low prices) our principal competitor may be Sun. If there was ever an opportunity to tighten up the Ontario market, this should be it.*
>
> . . .
>
> "Texaco appear to have no option to purchasing processing. It is too late to build and the N.E.B. have indicated that they are not too sympathetic."
>
> (Document # 31039, February 16, 1972, Shell, emphasis added)[948]

The same intent — to raise the industry wholesale price level — can also be found in concern expressed by Shell's marketing department over a proposed processing arrangement for Murphy:

> "*Marketing's principal concern in connection with processing for a company such as Murphy is to ensure that the prices quoted do not encourage them to hold wholesale prices down at current low levels. In Ontario, if we can obtain a processing fee equal to or better than that quoted to Texaco we would appear to achieve this objective* and may at the same time reduce the volume of gasoline being transferred across the Energy Board line into Ontario. At Montreal, the process fee should be high enough to ensure that Murphy will not have products at prices below Marketing product planning values."
>
> (Document # 32181, May 2, 1972, Shell, emphasis added)[949]

It is important to note that Shell, in its consideration of the Texaco processing arrangement, conditioned its policy on the understanding that Imperial would be reluctant to sell to Texaco — that it too wished to increase wholesale prices to independents. This meant Texaco did not have an alternative supply source, since as of 1970, product movement across the National Oil Policy Line was increasingly restricted.

This perception of Imperial's policies corresponds closely to that found in Imperial's own documents. Throughout the early nineteen seventies, Imperial also pressed for higher wholesale prices. In a discussion of recommended product price changes west of the NOP line, Imperial noted that it was:

> ". . . important . . . to encourage continued firming in wholesale markets. . . . *Most jobber and industrial contracts escalate with product postings*."
>
> (Document # 116177, April 10, 1973, Imperial, emphasis added)[950]

In keeping with this position, Imperial was reluctant, as Shell noted, to supply Texaco except at prices that would have removed Texaco's ability to supply product to the independent market. In 1967, Texaco approached Imperial for processing starting in 1969. Imperial's considerations on this matter are outlined in the following:

> ". . . it appears that industry will likely by slightly short of capacity in Ontario by 1969. Processing fees should command an abnormally high price.
>
> . . .
>
> "Conclusion — there is a significant incentive for Imperial to provide supply to Texaco in Ontario. This incentive is composed of —
>
> (a) Processing fee or equivalent.
>
> (b) Crude producing profits.
>
> (c) *Improved price maintenance through affecting Texaco's cost of marginal volume*."
>
> (Document # 91756, September 19, 1967, Imperial, emphasis added)[951]

The parallel policies followed by both Shell and Imperial had their intended effect. Texaco's processing costs were increased substantially by 1973. For example, between 1969 and 1971, Shell processed for Texaco at a base fee of 70 cents per barrel (Document # 42749).[952] In 1972 Shell entered into a purchase/sale agreement based on a processing fee of 76.5 cents per barrel, but indicated the fee for 1973 would be at least $1.20 per barrel (Document # 31039-41).[953] Texaco eventually was forced to pay a crude processing fee of $1.35 per barrel in 1973 and $1.40 per barrel in 1974 to Imperial.[1] That these fees were sufficiently high to preclude Texaco from supplying jobbers and wholesalers and, therefore, high enough to improve "price maintenance" is evident from Texaco's perception of the effect of the higher processing fee on its wholesale activities:[2]

> *"It is apparent that the high fee processing rates being charged by Imperial, Shell and Sun in '74 on will effectively reduce our requirements in Ontario, by preventing us from retaining present business with jobbers and wholesalers."*
>
> (Document # 6877, March 1, 1972, Texaco, emphasis added)[954]

Two Texaco independent accounts — CTC and the Co-op — were critically affected. Texaco noted, in 1972, that revenues from the CTC and the Co-op accounts would have been substantially less than the cost of the product processed for it by Imperial and Shell. In referring to the net revenues it would obtain from these two accounts, Texaco stated:

> "It will be observed that these revenues are less than the '74 transfer prices, including Port Credit processing in Ontario. *They are substantially less than the cost of fee processing by Imperial and Shell.* The volume of Imperial plus Shell processing is 12,000 B/D in '73 and 5,500 B/D in '74. The cost of fee processing at Sun will be very close to that at Imperial and Shell in '74 on."
>
> (Document # 6876, March 1, 1972, Texaco, emphasis added)[955]

Under 'normal circumstances' the CTC and Co-op accounts had been profitable to Texaco because of their large volume and contribution to overhead.

Therefore, in this situation where two refiners controlled the surplus refining capacity in Ontario, *both* exploited their position in an attempt to raise the wholesale price level. Shell knew of Imperial's 'reluctance to sell to Texaco (especially at low prices)' and thus recognized that it had a good 'opportunity to tighten up the Ontario market' — something it had wanted to do for a long time since higher wholesale prices served to curb the growth of the independents. Instead of looking upon Imperial's position as an opportunity to obtain the Texaco account and thereby fill out its refinery capacity, Shell adopted a position similar to that of Imperial whose objective was to raise wholesale prices.

---

1. Source: Exhibit T-18, Toronto Hearings, p. 1
2. Also, see document # 6873.

In the Spring of 1973, Shell moved further to force wholesale prices upwards. It implemented a policy of reducing the amount of product it supplied to the unbranded independent sector in its Central Marketing Region. The adoption of this policy coincided with its ongoing attempt to stop the growth of the unbranded sector. The importance of Shell's actions in denying product to the unbranded marketer lay not only in the specific objectives of this particular action but also in the fact that these objectives coincided with the goals of other policy instruments that Shell had been using. Thus, the attempt by Shell to deny product to the unbrandeds must be examined not only as to the intent, strategy and effect of this one policy action, but should also be considered in the context of the expressed objectives of these other policy instruments. As has been shown in the analyses of consignment, allowances and second brand policies, the fact that alternate practices were chosen at different points in time does not indicate that the company's intent had changed, nor that any one instrument was necessarily unsuccessful; rather, the selection of any one practice to discipline the independents depended upon existing circumstances and Shell's assessment as to which instruments were likely to be successful given these circumstances. With the reduction in the availability of foreign supplies, and the concentration of 'excess capacity' in the hands of Shell and Imperial, the opportunity to force up wholesale prices by denying product to the independents presented itself to Shell.

At the end of 1972, Shell made a decision to reduce supply to the independents. On April 9th, 1973, the Shell Vice-President of Marketing observed that Shell's sales were off by exactly the 'planned' cut-back in sales to independents. In commenting on the wholesale market, he observed:

> ". . . we are 9 Million gallons off the first quarter budget but in analysing we are showing a growth in retail of 'X' percent and our shortfall reflects *our planned cut-back on sales to independents*."
>
> (Document # 34404, April 9, 1973, Shell, emphasis added)[956]

Similarly, on April 13th, the Vice-President noted that this cut-back was planned for 1973. The Vice-President stated:

> "Our first quarter gasoline sales are some 10 Million gallons under budget reflecting almost entirely the decision to discontinue sales to unbranded marketers in Central Region in 1973."
>
> (Document # 21174, April 13, 1973, Shell)[957]

Shell's Vice-President expanded upon his company's policy at this time. In testimony reported below, he confirmed that Shell's objective was to influence price upwards because discounters were cutting into Shell's market. Shell's policy was not simply one of refusing to supply product to the unbranded marketers; rather it was a question of supplying product to the unbranded marketers at a wholesale price that would minimize their impact upon the

branded retail network. In the Vice-President's words: "it would be at a price that would provide some sense into the market place" (C.F. Williams, Toronto Hearings, 1975)[958] Shell was unwilling to provide gasoline to the independent discounters even though it recognized that the success of these discounters was not the result of their lower product costs but rather of their lower distribution— wholesale and retail — costs. Shell was, therefore, trying to squeeze a competitor whose growth had been the result of lower costs than its own.

The Vice-President of Marketing explained Shell's decision to refuse supply to the independents in 1973 in the following testimony:

"Q. I have had placed in front of you a document running from serials 21173 to 21176 and I would like to refer you to 21174 and to the third paragraph:

> 'Our first quarter gasoline sales are some 10 Million gallons under budget reflecting almost entirely the decision to discontinue sales to unbranded marketers in Central Region in 1973.'

Whose decision was that?

A. That would be primarily mine.

Q. Why did you decide to discontinue sales to unbranded marketers in Central Region in 1973?

A. In late 1972, and we have had previous reference, the ability of the unbrandeds to create a price disturbance, was reaching a proportion where our income was seriously affected.

We either had to decide to cut back refineries, reduce the price at all Shell outlets, or not to be schizophrenic and do not sell low prices to the deep discounters and try to keep our own dealer network viable.

So we said 'we will test it and we will withdraw from any new unbranded business'. Anybody we had on contract, we would continue with. I think previous to this we had a pretty good run at the unbrandeds.

Q. Once you made a decision like that, how long would it take to run your contracts out so that indeed you were not supplying any unbrandeds?

A. Well, as I said, the unbrandeds include the department stores, Simpsons-Sears and the likes, so they would be on annual contracts with renewal clauses.

Q. All right. How long would it take to run out any deep discounters?

A. This was really a bit of strategy and we did not just cut them off, we just told them the price would go up.

When I say 'discontinue' it doesn't mean we stopped. It just means we said our price would go up when the contract ran out. They would try elsewhere.

Q. Did you increase the price knowing that they would decline? Is that the idea?

A. We would not really mind. If they accepted, it would be a price that would provide some sense into the marketplace.

Q. But you were not willing to supply them at prices that would allow them to continue the deep discounting?

A. That is right. It was interfering with our total corporate viability.

Q. Then I take it from this document that what you did with that surplus of gasoline that you had as a result was to ship it to the United States?

A. That is right.

Q. Who would buy it there?

A. As I recall, that was our first venture into that, and there was an outfit called Royale Petroleum in Montreal who was a little faster on the market than we were and he bought a cargo earlier. He just came and asked us for a cargo of gasoline and he shipped it to the United States."

(Testimony of Mr. C.F. Williams, Vice-President Public Affairs and Corporate Planning, Shell, Toronto Hearings 1975, Vol. III, pp. 384-6)[959]

This indicates that Shell adopted a policy of refusing to supply unbranded marketers or, more accurately, adopted a policy of supplying marketers at a price that would not allow the independents to continue the deep discounting. Should unbrandeds have refused to accept this price, Shell would not have supplied them. The *intent* of this policy was to force the unbranded's price upwards:

"Q. Did you increase the price *knowing* that they would decline? Is that the idea?

A. We would not really mind. If they accepted, it would be at a price that would provide some sense into the marketplace.

Q. But you were not willing to supply them at prices that would allow them to continue the deep discounting?

A. That is right. It was interfering with our total corporate viability."

(Testimony of Mr. C.F. Williams, Vice-President Public Affairs and Corporate Planning, Shell, Toronto Hearings 1975, Vol. III, pp. 385-6, emphasis added)[960]

It is apparent then that Shell deliberately cut back supply to the independent retailer — quite content to see its refinery sales reduced if this would force the wholesale price up and reduce the pressure the independents were placing on Shell's branded network. Fortunately, the shortage that developed in the United States provided Shell with an outlet for the surplus that resulted. The Vice-President of Shell was asked:

"Q. Then I take it from this document [# 21173-6] that what you did with that surplus of gasoline that you had as a result was to ship it to the U.S.?

A. That is right."

(Testimony of Mr. C.F. Williams, Vice-President Public Affairs and Corporate Planning, Shell, Toronto Hearings 1975, Vol. III, p. 386)[961]

This sequence of events makes it clear that the OPEC crisis of late 1973 was not the cause of increased exports to the United States and a resultant product shortage in Canada that affected the independents. Shell first withdrew supply from the independent market. Then, independents found themselves short of product, wholesale prices were moved upwards towards the end of the first quarter of 1973. At about this time, Shell found that markets had tightened in the United States and they were fortuitously able to sell the product that had been withdrawn from the independent market at the beginning of the year. For example, in the same document that noted first quarter sales were "9 Million gallons off the first quarter budget" and that this just exactly "reflects our planned cut-back on sales to independents" (Document # 34404),[962] the Shell Vice-President noted that it was not until the end of March that major gasoline sales were made into the United States:

> ". . . towards the end of March we completed negotiations on sales of 'X' gallons (35 Million?) of gasoline to wholesale customers in the United States and Canada. Assuming that we can maintain our budget position on retail gasoline for the balance of the year, these additional sales will bring us 'X' gallons over Plan."
>
> (Document # 34404, April 9, 1973, Shell)[963]

There is a similarity between Shell's and Imperial's policies in this period. Shell's strategy that was designed to achieve its 'planned cut-back on sales to independents' was very similar to Imperial's long-standing policy of discouraging wholesale sales. In 1972, Imperial perceived that it was not "predominant in the wholesale gasoline market in Canada" (Document # 119396).[964] That its position was clearly the result of a policy decision is evident from Imperial's observation:

> "In the past, our policy has been to quote jobber business twenty points above the high of 17.0 c.p.g. in Toronto. Naturally we have hardly penetrated the market. If, however, we desire to achieve our rightful share of this market, which could be based on our refinery capacity versus Industry in Ontario, we would have to look at prices in the 16.75 c.p.g. range."
>
> (Document # 119397, February 21, 1972, Imperial)[965]

In view of the fact that Imperial and Shell were the only refiners with refining capacity surplus to their own needs at this time, and that both of these two companies took the same stance against the independents, the latter were placed in a position where their cost of product increased. The following two documents (Document # 32038-9)[966] outline the course of the wholesale markets in the Central and Eastern Complex in early 1973. Prices were relatively stable until late March and early April. Then within several weeks, the wholesale price was moved upwards by about 3 cents per gallon.

The way in which this policy was combined with retail practices refutes any argument that it was the natural outcome of a competitive market

adjusting to changed conditions. For the increase in wholesale prices was used by Shell in combination with an aggressive pricing policy at the retail end to squeeze unbranded margins. In this, Shell followed Imperial's lead. In 1968, Texaco, Shell and Imperial knowingly adopted concurrent policies that reinforced one another; similarly in 1973, Shell followed Imperial's wholesale and retail lead in full knowledge of the impact of the joint effect of their policies.

As already developed, Shell was fully cognizant that Imperial and itself controlled the surplus capacity at the time and that this would "facilitate our [Shell's] efforts to lead wholesale prices up" (Document # 30777).[967] In order to coordinate its policies with those of Imperial, Shell carefully watched Imperial's pricing policies to independents. In an April 5th, 1973 memorandum on the Central Complex Reseller Market that outlined the course of Shell's prices to this market, the General Manager of Marketing quoted Imperial's prices to Martin (an independent) and speculated on changes in this price (Document # 32037-8).[968]

Shell also paid careful attention to the way Imperial's second brand pricing policy was being used to squeeze the independents. For instance, Shell remarked that Imperial used its Gain brand to fight the unbrandeds at the retail level and a Shell summary of competition prepared at the beginning of May noted that Imperial was pricing Gain 1 to 2 cents below independents in any trade area. The following excerpts contain Shell's observations as to the prices Imperial was charging the independents as well as its second brand pricing policies:

"NOTES TO CHART — ALL PRICES — REGULAR MOGAS

EX. F.S.T. — CPG

	CENTRAL COMPLEX		
(1)	January 15/73	- 15.20 -	Esso price to Martin — f.o.b. refinery
(2)	January 16/73	- 15.70 -	Crude increase of approximately 1.1¢/gallon but Esso/Martin contact [sic] allows 50/50 sharing of T/W increase of only 1.0¢
(3)	March 19/73	- 16.20 -	Shell speculation re minimum Esso price to Martin on any new contract (April) negotiated (recovers domestic 30¢/bbl. crude increase)
(4)		- 16.60 -	Shell Marketing establishes price level at which we'd be prepared to quote unbrandeds
(5)		- 16.60 -	Figure provided to T and S as base for Natomas sale by T and S
(6)	March 22/73	- 17.95 -	Marketing sale to Enterprise
(7)	March 25/73	- 18.25 -	Roy-L- f.o.b. Sarnia

EASTERN COMPLEX

(8)	January 16/73	- 14.40 -	Competitive price level to pribrand jobber (Delco petroleum sale by Shell)
(9)	March 22/73	- 15.70 -	Marketing sale to Roy-L
(10)		- 18.40 -	Same sale — grade No. 1 price level
(11)	April 3/73	- 21.40 -	Additional No. 1 sale to Roy-L
(12)	May 15/73	- 17.50 -	120M bbls. to Universal Terminals, Cornwall (export to U.S.)"

(Document # 32038, April 5, 1973, Shell)[969]

"*FOOTNOTES*:

1. Note that the March 22nd Roy-L sale at *Montreal* equals in price the current Esso-to-Martin price in *Toronto*. At January 16th there was a differential between Toronto and Montreal of 1.30 cpg in favour of Toronto.
2. The Marketing price decision of *March 19th* to establish a minimum of 16.60¢ (18.50 FST incl.) for negotiation with resellers (our TC. 020) in Ontario was the best figure our judgement could produce at that date.
3. The T and S sale to Natomas at the 16.60 was in concert with our price attitude at the time.
4. The Roy-L sale at Montreal at 15.70 led us to raise our Central complex sights on price, which produced the (accepted) quote to Enterprise of 17.95 cpg.
5. Immediately following the Enterprise offering, Roy-L accepted 18.25 ex Sarnia (and a lesser volume ex Oakville — same price).
6. If we take the 17.95¢ sale to Enterprise (6) and the 15.70¢ sale to Roy-L (8) as comparables in Central and Eastern upon which to base a Retail pricing posture, the following Retail price is derived:

No. 2 Mogas	*Montreal*	*Toronto*
Grossback	15.70*	17.95*
F.S.T.	2.00	2.30
Road Tax	19.00	19.00
Delivery	.50	.50
Dealer Margin	7.20	6.00
Credit Card	1.00	1.00
Total	45.40**	47.35**
Retail Pump	45.90	47.90

*Note that this price is not as high as the 'last' barrel sold in either complex.
**Includes no overheads except c/c at 1.00 cpg.

In the event of a non-replaceable product shortage we would remove support in the branded network below these levels."

(Document # 32039, April 5, 1973, Shell)[970]

"*UNBRANDEDS*

— In the past month we have seen virtually no deterioration in the unbranded pricing. Unbrandeds tend to remain at the 45 ± 1 cent range.

— Martin and Arrow seem to be looking for a 47.9 price throughout the Region.

— *Esso's Gain has been aggressive staying 1 to 2 cents lower than the price in any trade area but never going below a 41.9 price.*"

(Document # 28377, April 30, 1973, Shell, emphasis added)[971]

Shell appreciated that Imperial's actions at the wholesale and retail levels together were squeezing the independent marketer. In a May study of gasoline pricing, Shell observed:

"Esso appear willing to match our Branded price restoration, except where Gulf refuses to come up. However, they are being very aggressive with their Pribrands. Esso have opened a substantial number of Gain brand outlets during the past few months and appear to be using the current market situation to:

. . .

"*put the squeeze on the Unbrandeds through higher wholesale prices, combined with volume dilution in the market place*;

. . .

"In a number of instances they are below the lowest Independent in the area."

(Document # 34427-8, Undated, Shell, emphasis added)[972]

The objective of this squeeze, as Shell recognized, was a price restoration. The independents were to be forced to increase prices and to reduce the differential between themselves and the majors. The General Manager of Marketing noted that, at the wholesale level, Imperial was selling to the unbranded market at 21.9 cents per gallon a level which forced "the unbranded to post prices at something like 46.9-47.9¢" (Document # 27087).[973] While the unbranded was 'forced' to sell at these prices, Shell observed that Imperial's second brands, Gain and Econo, "were frequently below that price" (Document # 27087).[974] For instance, in the week of May 3, 1973 (1 week before the memo), Gain and Econo as well as Texaco and Sun's second brands were selling at 41.9 cents per gallon (Document # 31988).[975] The Shell General Manager Marketing commented that this would 'squeeze' the volume of the independents — the same objective that Shell had set for its allowance, consignment, and second brand programmes:

". . . it's clear that this trade class [unbrandeds] is under some substantial price pressure by Esso.

. . .

"This will produce the squeeze on volume growth which has enabled the unbranded to keep margin down while achieving revenue through the volume multiplier."

(Document # 27087, May 9, 1973, Shell)[976]

The objective of Esso's pricing pressure, as perceived by Shell,[1] was to move unbranded prices upwards to within 4 cents of the branded price structure. Shell's General Manager Marketing, in commenting on Imperial's policies, observed:

> "*Possibly* the unbrandeds will perceive this as a sign on the part of Esso to allow a four cent differential at the pump."
>
> (Document # 27088, May 9, 1973, Shell)[977]

Based on these observations of Imperial's practices and fully appreciating the effect of these actions, the General Manager recommended that Shell duplicate Imperial's policies. On the wholesale side, it was recommended that Shell move to a level of 21.9 cents per gallon a price that Shell had observed would have forced the independents to retail 'at something like 46.9-47.9':

> "In Head Office, concerned mainly with CFM, and in connection with any mogas supply which may become available, we will be thinking in price terms at this level-i.e. 21.9 cpg."
>
> (Document # 27088, May 9, 1973, Shell)[978]

On the retail side, although it was recognized that Imperial's second brand price policy was hurting the independents, Shell also adopted Imperial's policies by deciding to price its second brand network with Gain and Econo stations (Document # 27088).[979]

The objective behind Shell's policy was investigated at greater length at hearings held in 1975. The individual who had been General Manager of Marketing at the time was asked why Shell followed Imperial so closely:

> "Q. Did you, in some sense, control the price at which the independents were selling by means of the price at which you sold to them?
>
> A. Yes, they cannot undersell their cost.
>
> Q. So that, is that one way of trying to affect a price restoration, an increase in the price to the independents so that their retail prices would go up?
>
> A. If their costs go up, I think you have to infer that their end prices go up.
>
> . . .
>
> Q. Was the price increase to the independents generally in 1972 and 1973?
>
> A. *In'73, yes*; in'72, no.
>
> . . .
>
> Q. I am speaking now of serials 27087 and 27088.

1. Refer to the Imperial Oil section entitled "The Three-Tiered Pricing Strategy" which shows that Imperial Oil's objective was to establish a 4 cent per gallon differential between the Esso brand and the independents.

A. Yes.

Q. At the bottom of 27087 it says:

> 'It would appear that Esso's strategy is to price at wholesale at a level *which forces the unbranded to post prices at something like 46.9-47.9¢.*'

Then it gives an example and he says:

> '. . . *while their Gains and Econos are frequently below that price.*'

Now I take it that Gain and Econo are the second brands of Esso?

A. Yes.

Q. So what was happening here was that Esso raised their wholesale price which had the effect of forcing unbranded to increase their price to the level indicated there?

A. That was our observation of the market.

Q. That was your observation? I take it your further observation was that Esso then had Gain and Econo sell at less than the price at which the unbranded was forced to sell it, is that right?

A. We looked at the prices on their signs in the market and that is what they were selling at.

Q. This, I take it, would tend to put the pressure on the unbranded?

A. The price market is very sensitive.

Q. *Would this tend to hurt the unbranded*?

A. *That is what I have said*. Pricing is very sensitive to minor variations. The volume is very sensitive to minor variations in price. If this was a tactic, this is what would develop.

Q. What would be the object of such an exercise?

A. Perhaps it was their idea of a price restoration.

Q. Would this —

A. This is pure speculation on my part. I cannot begin to understand their tactic.

Q. Would this have the tendency to force the unbranded out of business?

A. Not at all. It might force them to change their price level.

Q. It would do that, if they couldn't afford to lower their price because of the wholesale price they were paying, then would that not tend to force them out of business?

A. By making the — I have nothing to offer, other than what I have written here as to observations.

Q. I am just asking you to interpret your observations.

A. No, the observations go on further to say *that perhaps the independents will perceive this as a sign on the part of Esso to allow a four cent differential at the*

pump. My assumption is that if they do that, Esso may relent in the pricing pressure.

. . .

A. *Right, and with the expectation that they would move up if the independents did.*"

(Testimony of Mr. A. G. Seager, General Manager of Marketing, Shell, Toronto Hearings 1975, Vol. I, pp. 177-85, emphasis added)[980]

This evidence along with its actions confirms that the intent of Shell's use of second brands was to force prices upward. Therefore Shell utilized both its second brand and its wholesale policies to support Imperial's actions to force the independents to only a 4 cent differential with the branded system.[1]

Shell's wholesale and retail policies of 1973 once more illustrate the nature of disciplinary predation practised by this company. The only difference was that, on this occasion, a two-pronged approach was used to force the independents to adopt a price differential vis-à-vis the majors that did not reflect relative costs. This policy, as Shell described it, was meant to prevent the independents from continuing to price at a discount that reflected their lower cost levels. Aggressive pricing for temporary periods along with an increase in wholesale prices was meant to d signify to the independents that they would only be tolerate if they priced no more than 4 cents below the brand.

While this episode confirms the predatory objectives of Shell, it is equally important because it illustrates how the two majors acted in parallel fashion to accomplish the same goal. Shell adopted its predatory policy in full knowledge of Imperial's actions. It understood that by doing so it would also discipline the independent marketer. Action of this nature cannot be described as innocent parallelism — a behavioural pattern that participants have no choice but to follow. Shell could have chosen to compete aggressively at the wholesale level rather than to increase wholesale prices and aggressively price with Esso at the retail level. Instead, Shell chose to follow Esso's squeeze tactics because it recognized that the effects of this policy accorded with its own objectives — the same objectives that motivated it to introduce temporary allowances, to develop consignment programmes, and to use fighting brands against the independents. Each was used, in different circumstances, to reduce the spread of price competition. In 1973, when presented with the opportunity to accomplish this goal by following Imperial's action, Shell chose to squeeze the independents.

Figure 26 depicts the trend in wholesale prices (the refinery gate price) during 1972 and 1973. As well, it includes what Shell referred to as the

---

1. In this connection it is important to recall that Shell recognized the cost differential between the two sectors was much greater than 4 cents.

Product Planning Value — its long run average cost of product. Therefore it affords a comparison of the state of the wholesale market as compared to crude and refinery costs. In early 1972, the "refinery gate price" to the unbranded market was about 15 cents per gallon. Beginning in January 1973, there was a sharp jump in price. By the second quarter, the refinery gate price had reached some 21 cents per gallon — an increase of about 6 cents per gallon. No such increase occured in refinery costs. Both this increase in wholesale prices and Shell and Imperial's aggressive second brand pricing policy were used to force the independents to adopt higher prices.

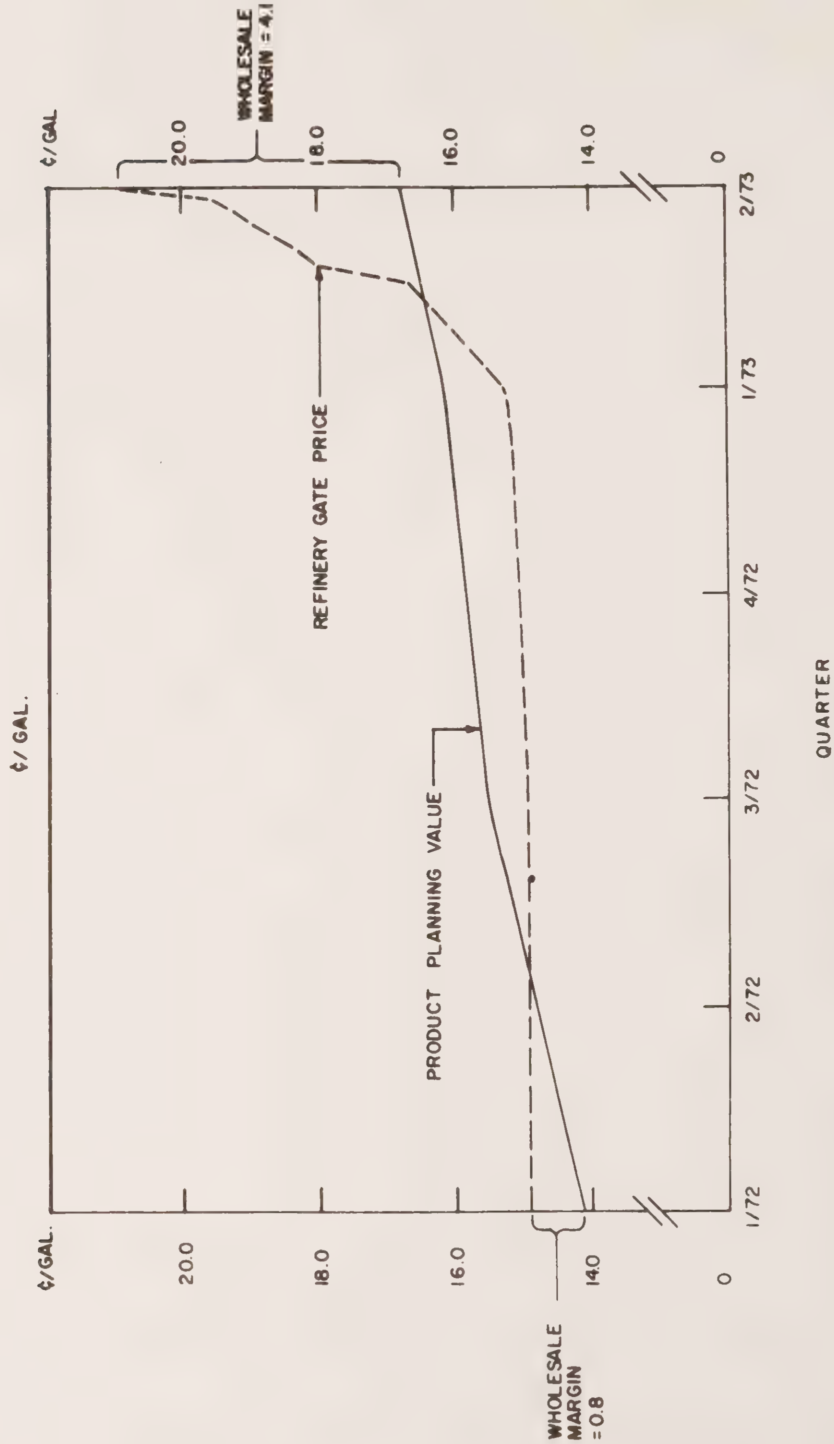
During this period of increasing wholesale prices and aggressive retail pricing by Shell and Imperial, Texaco closely monitored the pricing situation in their various marketing 'Districts' in Ontario. Texaco's observations provided a running account of the tactics that were employed and attest to their ultimate success. For March 1973, Texaco remarked that "ESSO now leading in lowering prices in Metro area. Dropped prices to 49.9 in traditional firm areas" (Document # 56067).[981] For April of 1973,Texaco observed that, in their 'District #2', "ESSO & SHELL [are] gaining volume thru [sic] GAIN & BEAVER outlets" (Document # 56060).[982] In this same district, Texaco noted that Imperial's branded prices had also decreased to within 2¢ per gallon of the unbrandeds—"Prices firmed up, unbranded prices up ESSO & GULF dropped to 49.9 vs. 47.9 at ARROW and XL" (Document # 56064).[983] Commenting upon 'District #3', Texaco indicated that the majors had countered the independents with their pricing policy— "Majors recovered volume lost to unbranded or discounts" (Document # 56060).[984]

Texaco then observed that following this period of aggressive retail pricing, Imperial and Shell took the lead in moving retail prices upwards. Texaco, in commenting on events in 'District #9' that took place in April, noted "Market firmed up in most areas. SHELL leading with I.O. [Imperial Oil] & B.P. following . . . " (Document # 56064).[985] For May, Texaco observed that for seven of their nine 'Districts' in Ontario, retail prices had 'firmed' or moved upwards (Document # 56064).[986] For example, regarding 'District #3', Texaco stated "Good, unbrandeds have moved to 48.9 with majors at 49.9" (Document # 56060).[987] For June, Texaco remarked that price strengthening had taken place in its 'District #6'—"Market firming led by I.O. [Imperial Oil] & SHELL" (Document #56064).[988]

Texaco's observations indicate that the squeeze employed by the majors was responsible for affecting the independents. For May, Texaco observed that in 'District #1', "Unbranded capital city [sic], supplied by B.P. will close June 1 due to drastic cuts in price and supply or Financial Instability [sic]" (Document # 56065).[989] At the same time, Texaco remarked that, in 'District #4', there were "Growing strains on discounters, outlets going out of business" (Document # 56065).[990]

FIGURE 26

RECENT TREND IN WHOLESALE MARGINS - ONTARIO REGULAR MOTOR GASOLINE



(Reproduction of Document #30082 'Figure 26' added)

Observations were also made by Shell that attest to the success of the disciplinary policy that was employed against independents at this time. In a paper prepared for a meeting of Shell companies in London, England, Shell Canada reported on the success of the price squeeze. Between 1969 and 1972, Shell noted that the independent marketers increased their "market penetration by 50% to the current level of 12%" (Document # 30074).[991] However, the "rapid escalation in refinery gate prices" forced "the independent to narrow the spread between his pump prices relative to the major brands" (Document # 30074).[992] This "levelled the independent growth rate to that of the industry as a whole" (Document # 30074).[993] A similar comment to the effect that independents had had their "growth arrested" can be found in a background paper to the same study (Document # 30095).[994]

Therefore, the events of 1973 provide further evidence that the purpose of the majors' marketing practices was to restrict price competition in the marketing sector. As with temporary allowances, consignment, and the use of second brands, the majors' policies in 1973 were aimed at increasing prices in the unbranded sector in order to protect the branded retail network. To this end, the majors' tailored various instruments to restrict and to delay the spread of competition. As was evidenced in earlier sections, each was designed to fit the prevailing circumstances. By 1973, the prerequisite for a successful exploitation of market power in refining was created by a changing world crude situation. In turn, this meant that the opportunity arose to employ another instrument to discipline the independents. The majors, therefore, turned to the wholesale market to force the unbrandeds' supply costs up in order to achieve their other goal — the movement of unbranded prices upwards in those pockets where competition had developed. In combination with this policy, the majors priced their second brands for a period of time below the independents in order to force an increase in unbranded relative to branded prices. By the end of the year, Shell evaluated this disciplinary action as a success.

4. *The Prairie Market in the Early Nineteen Seventies*

Since Shell and Imperial controlled most of the surplus refining capacity in Ontario, the onus to raise wholesale prices fell on only two companies in this area. On the Prairies, surplus refining capacity was controlled by Gulf in the early nineteen seventies. Therefore only one company had to act in order to apply pressure to the independents by raising their wholesale prices. It is significant that Gulf used the opportunity to adopt the same policy on the Prairies as Imperial and Shell were doing in the east.

It had been Gulf's intention as early as 1968, to lead the industry in raising the independents' supply costs wherever possible (Gulf's "Eight Year Marketing Plan: 1971-78") (Documents # 72105, # 72044).[995, 996] By this

strategy, it hoped to move the general industry price level upward (Document # 72105).[997] It is clear from the following evaluation of a potential processing agreement with an independent that Gulf was intent on using its discretionary power at the refinery level to restrict the growth of independents:

> "*The supply of product to Nepco is counter to our program of increasing the general price level wherever possible.* Nepco lead the way in price cutting and are probably the most irresponsible element in the market. This applies to sales through dealers and to fuel oil jobbers.
>
> "*For quite some time we have been backing away from long-discount business in the wholesale market.* However, the supply of product to Nepco is equivalent to a sale in this market but at lower prices than we have offered anyone else including the largest jobbers and the railways."
>
> (Document # 75642-3, April 13, 1970, Gulf, emphasis added)[998]

It should be stressed that Gulf felt it necessary to increase wholesale prices not because these sales were unprofitable *per se*; for Gulf's direct sales — at least on the Prairies — were not unprofitable compared to sales through Gulf retail outlets.[1] Gulf chose to attempt to increase prices to this sector because of the effect independent private brand dealers were having on its own branded network. Its objective was to ensure the "expansion of this [Private Brand] market under direct control of Gulf" with the intent of making it "more readily controllable in terms of its impact on Gulf branded sales" (Document # 80334).[1001]

In order to accomplish this, Gulf developed a wholesale price policy aimed at the "direct and jobber markets." As the following document indicates, it adopted a set of minimum wholesale prices at levels that it recognized would probably reduce its share of this market:

> "A Minimum Netback structure will be maintained for all products sold in the direct and jobber markets. The more important strategies which are reflected in our Minimum Netbacks are as follows:
>
> 1. The Company is not prepared to participate in light oil business which provides only a minimal profit contribution per gallon. . . .
>
> 2. The Company strives to obtain a full contribution to Marketing and Corporate overhead on all light oils sold in the direct and jobber markets. This requires a profit contribution of between 1.35¢ and 2.20¢ per gallon over transfer price depending on the division concerned.
>
> 3. The Company does not believe that gaining any particular share of the direct and reseller markets is an objective and is prepared to forego sales which do not make

1. Documents # 80324,[999] # 80326,[1000] show net realizations differed for grade 1 gasoline by 1 cent per gallon, for grade 2 by less than half a cent. With the greater capital required in retail sales through Gulf's own organization, this price differential suggests that private brand sales were not unprofitable.

an adequate unit contribution to profit as defined in 1. and 2. above. *The Company is therefore prepared to accept a lower rate of growth than the industry in these markets.*"

(Document # 72106, May, 1970, Gulf, emphasis added)[1002]

Indeed, the policy that Gulf had been following with regard to wholesale prices had already led to a decrease in its share of the market; but, Gulf was willing to bear the cost in order to "improve prices". The same report noted:

"*Motor Gasoline* — Gulf's average annual sales increase is estimated at 2% compared to an industry estimate of 4.6%. *This reflects our commitment to improve prices and results in our not fully participating in the large volume, long discount business.*"

(Document # 72111, May, 1970, Gulf, emphasis added in last sentence)[1003]

Even when surpluses of gasoline developed, Gulf maintained this posture. For instance, although Gulf had been having a problem in mid-1970 selling all of its gasoline production (Document # 64955),[1004] it continued to do its part to contribute to market strengthening — a role that it had adopted in marketing as well. Gulf indicated at this time that it would not decrease wholesale prices to market its surplus:

"On the basis of existing price or costing structures the obvious solution of reducing Minimum Netbacks does not appear practical. The price reduction apparently necessary to accomplish any significant gasoline volume increase is such that a move in this direction would further depress an already depressed market. Short term expediency is not recommended, rather a longer term solution to the problem must be sought."

(Document # 64956, June 1970, Gulf)[1005]

"Considerable care must be exercised to ensure we do not bring market prices down by offering a discount where none was previously given or alternatively, of lengthening them in an endeavour to replace business lost in the larger volume longer discount accounts."

(Document # 64958, June, 1970, Gulf)[1006]

The excerpts quoted above pertain to Gulf's general corporate strategy; its behaviour in the Prairie region shows in more detail its reaction to the development of the private brand market. Gulf was a major supplier of independents in this region. Even though its minimum price policies were in effect,[1] Gulf still felt additional action was required to constrain the private brand market. The independents' costs were so much lower than the majors that

1. The 1971 Study of "The Motor Gasoline Reseller Market in the Prairie Provinces" (Documents # 71468-576)[1007] compares the realizations on sales to private branders to the Gulf transfer price (Documents # 71514-6)[1008] and indicates the difference was with only a few exceptions, above 1.5 to 2 cents per gallon. The minimum netback guidelines (Document # 72106)[1009] were therefore met.

they could afford to pay the minimum wholesale prices that Gulf had set and still threaten Gulf's branded network.

As a result, in 1971, a study of western Canada was begun by Gulf's Vice-President of Marketing "to recommend whatever courses of action may be considered necessary to stem the erosion of branded retailing in the Prairie Provinces" (Document # 71475).[1010] It was suggested by the Vice-President that Gulf's long range objective in western Canada should be "either to discontinue supply to private branders, or not to sell at a price that would give them a competitive advantage over the branded dealer" (Document # 75310).[1011] While this policy was to be directed at western Canada, it was devised with the purpose of extending it to other areas in Canada where the reseller market was important (Document # 71472).[1012]

Gulf chose to concentrate its study on the Prairie market because it controlled the surplus refining capacity in this area and, therefore, could influence the price and volume of gasoline sold to the resellers in the Prairie provinces:

> "Initially, consideration was given to undertaking the study on an all Canada basis, however, . . .it was decided to devote first attention to one key market area only. *The area selected was the Prairie Provinces, due to the fact that Gulf Canada has the only surplus refining capacity of any consequence in this area* and also due to the fact that the expansion of Private Brand outlets lets is a relatively new phenomenon in the Prairies."
>
> (Document # 71472, September 9, 1971, Gulf, emphasis added)[1013]

That Gulf was willing to extend the policy derived from its pricing study to areas where it did not have the same degree of control over surplus refining capacity indicating an understanding that its contribution to the majors' general purpose of constraining the independent sector was important.

The resulting study "The Motor Gasoline Reseller Market on the Prairie Provinces"[1] (Documents # 71468-576)[1014] attributed the rapid growth of the unbrandeds to the substantial branded wholesale/retail margins that the majors were taking. The combination of this high spread along with wholesale prices to independents at the minimum netback guidelines — several cents above the majors' transfer costs — left a broad umbrella under which the independents could function by discounting off major brand prices. Gulf estimated that between 1965 and 1971, the combined margin taken by the major brand increased by 7.1 cents per gallon to reach a level of 18.1 cents per gallon in Winnipeg, and by 5.6 cents per gallon to reach a level of 18.3 cents per gallon in Calgary (Document # 60025).[1015] Gulf also recognized that the reason the large resellers were able to "discount their retail prices by several cents per

1. Henceforth to be referred to as the "Reseller Study".

gallon below major retail prices and still have a retail margin very close to those available to major brand dealers" was that the independents were more efficient at both the wholesale and retail level (Documents # 71530-1).[1016] After detailed study, it was concluded that a lower margin for the brand was optimal if entry and expansion by the independents was to be prevented:

"*Significance of Combined Wholesale/Dealer Margin*

In a study done in 1968 and reported in some detail in a Marketing Department presentation entitled '*Urban Retail Study*' it was *concluded that, when the major oil companies' combined wholesale retail margin exceeded about 14 cents per gallon on regular grade gasoline — that is when the wholesale marketing margin plus the dealer spread, combined, exceeded 14 cents — the reseller market share would be expected to increase substantially at the expense of the major brands.*

. . .

"*The real criterion, of course, is not the major oil company margin but the differential between the resellers' purchase price of product and the majors' pump price less Provincial Road Tax.* It was seen in Table 8 that this 'Realization Under Major Brand Pump Price' generally amounts to between 16¢ and 17¢ per gallon."

(Document # 71529, September 9, 1971, Gulf, emphasis added)[1017]

"*. . . the margins available to the larger resellers are sufficient to enable them to discount their retail prices by several cents per gallon below major retail prices and still have a retail margin very close to those available to major brand dealers.* Furthermore, these discounted retail prices are utilized as a lever by the resellers to generate volume which, in turn, increases the reseller's utilization of his capital investment and labour."

(Document # 71530, September 9, 1971, Gulf, emphasis added)[1018]

Gulf considered two strategy options that would have reduced the price advantage enjoyed by the independents. The first involved an increase in its marketing department's efficiency. The second involved an increase in the resellers' supply costs (Document # 71531).[1019] Either would have reduced the margin under which the independents could function. Increasing the resellers' supply costs was regarded as a viable option for its was recommended that:

". . . the Marketing Department initiate a program to progressively increase realizations on motor gasoline sold to resellers on the *Prairie Provinces with the ultimate objective of eliminating the cost advantage presently enjoyed by the Private Brand Dealers over Gulf Canada branded dealers.* It is recommended that the Marketing Department develop an implementation plan that will minimize the short term effect on profits in achieving this objective."

(Document # 71490, September 9, 1971, Gulf, emphasis added)[1020]

Even though Gulf recognized it might have to increase the efficiency of its own marketing department, it decided upon the implementation of a price-squeeze response so as to have an immediate effect on the independents' growth rate. The following short-term solution was outlined:

"In order to limit the growth rate of the Private Brand Retailers, there are a wide variety of alternative strategies that could be employed by Gulf Canada in the short term, prior to complete implementation of Strategy 3 by Marketing. *These short term strategies generally involve either*:

(a) *increasing the price at which Resellers can purchase product.*

(b) *reducing the pump prices of gasoline.*

"*The objective of each of the above strategies is to reduce the combined wholesale/retail margin to the point where it will be unprofitable for Resellers to continue their rapid expansion.*"

(Document # 71533, September 9, 1971, Gulf, emphasis added)[1021]

In effect, then, Gulf's short-term solution to competition from the unbranded marketer was to squeeze the independents' wholesale/retail margin. While certain processing agreements — such as that with Pacific Petroleums[1]— could not be altered quickly, Gulf hoped that Pacific Petroleums would follow Gulf's lead in increasing the independents' product costs[2] (see Document # 71533).[1023] This price-squeeze recommendation was in keeping with the conclusions of an earlier study—"Relative Profitability of Reseller Operations Versus Major Brand Service Stations"—that emphasized the need both to reduce pump prices and to increase wholesale prices in order to stop the growth of the independents:

"Recognizing that in the foreseeable future Gulf will control most of the surplus refining capacity in Western Canada it is our feeling that despite this fact it is unlikely the necessary squeeze on reseller margins can be brought about entirely through bidding up the price on reseller supply: Action will also be required to bring about a reduction in pump prices.

"Nevertheless from the standpoint of a supplier of products, regardless of whether directly through Marketing Department to the reseller or indirectly through Crude Products Supply Department, it is our feeling that *Gulf should establish a policy guideline which would declare the amount of product Gulf is prepared to supply to resellers each year. In so doing the Company is recognizing a responsibility to try to bring supply prices more in line with those obtained from Gulf branded dealers.* By limiting the total volume of Gulf products Gulf is prepared to supply to resellers, C.P. & S. and Marketing will have the responsibility to get the best possible prices for products up to the agreed limit of volume. *No further sales beyond the limit would be permitted except at a price of, say, D.T.W. less 3 cents per gallon.* We realize that inevitably short-run profit opportunities will be passed up in following this

---

1. Document # 71512-7[1022] indicates that volumes distributed through Pacific Petroleums represented over 50 per cent of the total volumes originating with Gulf Canada that were destined for sale by private brand outlets.

2. Gulf did renegotiate with Husky at this time as described in the refining section and substantially increased Husky's costs — a move which would have had the same effect as the higher processing costs imposed on Texaco in the east (see above).

policy but we suggest it is a necessary part of the two directional squeeze needed until the cost of marketing through Gulf's branded outlets can be re-aligned."

(Document # 60119, July 21, 1971, Gulf, emphasis added)[1024]

The part of the short-term strategy that was aimed at increasing the independents' wholesale prices[1] depended for its effectiveness upon Gulf controlling surplus refining capacity in the Prairie provinces. Gulf perceived that by 1972 it would have the necessary control. It anticipated that it would be the only refiner with surplus capacity on the Prairies, and, therefore, the private brand distributors' marginal source of supply. Recognizing this, it decided to exploit its position in order to increase wholesale prices and to effect the squeeze on the independents' price margins from the wholesale side. Early in 1972, Gulf noted:

"Gulf Canada is in the favourable position on the Prairies of being the only refinery with surplus capacity until the new Imperial refinery is complete in 3 years time. Gulf should have an opportunity therefore to influence this market to a degree that is not possible elsewhere."

(Document # 75334, January, 1972, Gulf, emphasis added)[1025]

The policy that was suggested was a reduction in discounts to the independents to about 5 cents per gallon:

"A number of government inquiries have commented on the difference between prices to dealers and to independent resellers, being greater than the difference in the value of the package of products and services which the oil company sells to each. Exhibit 5 summarizes the approximate value of those services which a dealer gets and which a P.B.D. does not. These amount to approximately 5.2¢ per gallon, *and should represent some justification for this price differential.* Our present prices to P.B.D.'s are much closer to this differential than they have been in the past and reflect substantial progress in this area. *The ability to completely close this gap however has been impeded by the availability of product to P.B.D.'s from other suppliers at lower prices. The current supply position presents Gulf with an opportunity to rationalize this differential.*"

(Document # 75334, January, 1972, Gulf, emphasis added)[1026]

While Gulf felt there was 'some justification' for a 5 cent per gallon differential internal Gulf studies suggest the cost based differential was actually greater. In 1968, a Gulf study — the Urban Retail Study (Documents # 74527-643)[1027]—calculated that it needed 7.38 cents per gallon (Document # 74550)[1028] annually to amortize capital invested in marketing and return "the minimum objective of 7% yield after tax on new marketing investments" (Document # 74551)[1029] on the basis of its investment experience. When rent, revenue from other sources, and all net expenses that varied directly with

1. The other part of the short-term strategy—'reducing the pump prices of gasoline'—has been dealt with earlier.

sales — such as maintenance, delivery, supporting operational, advertising — were added to this, the total required to cover wholesale expenses for its own retail network was calculated as being 9.10 cents per gallon (Document # 74551).[1030] The relative breakdown by region is given in Table 39.[1] In contrast, Gulf calculated that fully allocated costs of sales of gasoline to private brand dealers in 1971 on #2 gasoline were only .95 cents (Document # 80326).[1031] Including an additional sum of return on capital increased the amount required from sales to private brand dealers to a maximum of 2 cents above transfer prices:

> "(A 2-cent margin would provide an acceptable return on Manufacturing capital and cover selling and overhead expenses)."
>
> (Document # 74559, May 27, 1968, Gulf)[1032]

TABLE 41
WHOLESALE MARGINS GULF COMPARED TO COSTS
1958-1968
(¢/gal.)

	Atlantic	*Quebec*	*Ontario*	*Prairie*	*Pacific*
CAP. INV. Per Annual Gallon (10 yr. Experience)	47.3	48.8	45.7	42.6	42.2
Margin Required to Service Capital	7.60	7.91	7.40	7.06	6.90
Total Required for Urban Areas	9.09	9.68	9.87	8.73	8.47
10 year actual (1958-68)	6.97[1]	6.25[2]	5.82[3]	7.06[4]	5.07[5]

Notes: 1. Halifax
2. Montreal
3. Toronto
4. Winnipeg
5. Vancouver

Source: Documents # 74600[1033] # 74604[1034] # 74608[1035] # 74612[1036] # 74616[1037]

In light of Gulf's recognized brand wholesale costs of around 9.10 cents per gallon for all of Canada, this means that discounts to independents should have been about 7 cents per gallon, on the basis of costs. Indeed, before Gulf's squeeze strategy was implemented, sales were being made at "discounts of up to 7.8¢ per gallon below dealer price" (Document # 80333).[1038] Therefore Gulf's objective to reduce discounts to around 5 cents involved an exploitation of its market power.

---

1. The earlier section in this chapter on 'Marketing Efficiency and the Unbrandeds' contains other studies of the relative costs of the two systems.

That Gulf felt itself able to increase the prices paid by independents was again restated in mid-1972:

> "*Because few competitors have surplus gasoline to sell P.B.D. accounts, Gulf's capacity to influence the market by raising the price to P.B.D.'s may be substantial.*"
>
> (Document # 72979, May 29, 1972, Gulf, emphasis added)[1039]

The result was that new guidelines were set for sales to independents that were in keeping with the recommendations of the Reseller Study. The strategy was to move "towards a discount of 5¢ per gallon maximum for PBD's" (Document # 72979).[1040] Two changes were also made that drastically altered the relative position of large as opposed to small independents. First, the new guidelines made the allowable discount a function of volume. Prior to the establishment of the guidelines, discounts were "insensitive to volume, with discounts of over 6¢ per gallon being given to small accounts in the 200,000 to 350,000 gallons range" (Document # 71513).[1041] The guidelines also stipulated that no new single outlet private brand dealer (P.B.D.) accounts, nor accounts below 500,000 gallons annual volume, would be taken on. This provision would have effectively stemmed the expansion of the smaller independents (as opposed to unbranded chains).

The guidelines were first applied to the Prairies and then, in May 1972, they were gradually extended across the country. In other areas, they were drawn so as to take account of the different market circumstances. For instance, in British Columbia, Gulf did not have the same control over surplus capacity and it noted:

> "In view of the above indications of surpluses ... Gulf's ability to influence upwards the prices to P.B.D.'s is less than it is on the Prairies."
>
> (Document # 72950, July 12, 1972, Gulf)[1042]

On the other hand, Gulf recognized that while it might not "be too effective in influencing P.B.D. pricing upwards, it could have an adverse effect on both the branded and unbranded market prices" if it attempted to expand P.B.D. sales "too precipitously" (Document # 72951).[1043] By October 1972, the private brand dealer guidelines for the British Columbia market were established. They were very similar to those issued for the Prairies; however, the maximum discounts from dealer tank wagon price were approximately 2 cents higher in British Columbia than in the Prairies. This was a reflection of the fact that the independent marketers in British Columbia had alternate supply sources — other refiners and imports.

In the Quebec Division, where the independent problem was acute, Gulf established guidelines that were similar to those it had developed for the Western Divisions. Gulf felt that neither itself nor any other refiner could have much success increasing the market prices to unbrandeds. However, it perceived

that, as in British Columbia, the "capacity by *any* refiner or importer to influence prices downward was *great*" (Document # 72957).[1044] Even though it had surplus refining capacity in Quebec, Gulf decided not to "assist new marketers to enter this market by offering to sell them product" (Document # 73091).[1045]

In Ontario, unbranded dealer guidelines were also established; but in the Atlantic region, where the independents had not penetrated the market, no policy guidelines were formulated initially. However, in 1972, Suny's, an independent, requested supply for the Maritime region. This forced Gulf to decide whether to supply an independent in this area. Gulf's deliberations show that it recognized the need for the majors to harmonize their actions — if it were able to determine that the other refiners would not supply Suny's, it too would refuse supply:

> "Other than a few significant PBD discounters in Moncton — Nobles & Simpson — and a smaller number of 'Metro Gas' (supplied by Esso, we believe) outlets, there isn't much in the way of what one would consider 'PBD action' in the Atlantic. Indeed, discounting per se, is almost non-existent except for a few 'pockets'.
>
> "It is fair to assume that this growing discount segment of the gasoline buying public will be met by a PBD — if not Suny's then somebody just like him. The 'if somebody is going to supply it *anyway*, then why shouldn't it be us?' type of argument really is the main basis for adopting our recommendation to supply at this time. We do not see any reason why Esso, Texaco, Irving, etc., would not quote for the business. However, if Head Office feels or is able to ascertain that Gulf is the *only* company that will quote then we *definitely should not* quote and thereby open up the market for PBD's. We do not want to cause problems for Gulf in the long term. This, of course, brings us to the question of the discount level."
>
> (Document # 72502, March 8, 1972, Gulf)[1046]

In May of 1973, the Product Pricing Committee extensively discussed the wholesale policy that Gulf had implemented and decided to maintain "its responsible approach"—"not to price aggressively for new business but to minimize discounts" (Document # 72830).[1047] As is demonstrated above, it was at this time that Shell and Imperial escalated wholesale prices in response to their enhanced market power as the OPEC crisis shut off overseas supply. Gulf reacted similarly. By the end of the summer of 1973, Gulf had generally reduced the maximum allowable discount stipulated in its private brand dealer guidelines to 4 cents per gallon. In June 1973, it lowered the maximum discount to 4 cents per gallon in the Ontario, Quebec (Document # 72814)[1048] and Pacific Divisions (Document # 72821).[1049] In the same month, it assessed the possibility of reducing the maximum discount to 4 cents per gallon in the Prairie Division as well. This is evident from the following excerpt of a letter from C.G. Walker (Executive Director, V.P. Marketing) to W.H. Griffin:

"*P.B.D. PRICE GUIDELINES — PRAIRIE DIVISION*

S&T advise that Norm Gordon has or is about to request a product clearance for 13 million gallons of gasoline to Canadian Propane in Prairie Division and I have been given to understand that his price proposal would probably be in line with the latest published price guideline. (19.3¢/gal.)

"In light of the most recent developments here in Eastern Canada, may I suggest an immediate contact to ensure withholding any price proposal until further consideration can be given to our guidelines. *We may well wish to consider revising our guidelines in the west to reflect a similar strategy to that developed in Eastern Canada (i.e. 4¢ discount).*"

(Document # 73011, June 12, 1973, Gulf, emphasis added)[1050]

In August 1973, two months later, the 4 cent discount was established in the Prairie Division (Document # 72790).[1051] The differential, therefore, had reached a level below the 5 cents per gallon that, it has already been argued, could not be justified by Gulf's costs.

By extending its 'private brand guidelines' across the country, and by narrowing the wholesale discount to 4 cents per gallon, Gulf had adopted the same wholesale policies as both Imperial and Shell. Imperial had also implemented a 3 to 4 cent differential as is evident from the following price guideline established by Imperial in 1973:

"(a) *Motor gasoline prices to the reseller market will range from 3-4¢/gallon below Imperial's posted dealer tank wagon price at the point of delivery (or pick-up).* Exceptions to this guideline may be recommended based upon product end use and size of account."

(Document # 119410, July 25, 1973, Imperial, emphasis added)[1052]

In addition, Shell adopted this policy. As was discussed earlier, Shell carefully followed Imperial's policy at this time. The pricing policy formulated by Shell was stated as:

"In Head Office, concerned mainly with CFM, and in connection with any mogas supply which may become available, we will be thinking in price terms at this [Esso's] level — i.e. 21.9 cpg."

(Document # 27088, May 9, 1973, Shell)[1053]

Thus, all three majors — Gulf, Shell, and Imperial — adopted similar wholesale policies. They served to cut the discount off tankwagon price that determined the independents' wholesale price from an average of 7 to 8 cents per gallon to between 3 and 4 cents per gallon. In conjunction with aggressive retail policies that the same firms were following, the independent sector suffered a significant cost price squeeze.

5. *Conclusion*

This section on wholesale policies has shown the way in which the major petroleum firms — Imperial, Shell, Texaco and Gulf — devised and

implemented wholesale policies that complemented those predatory practices they were using in the retail sector. For purposes of the analysis, it is significant that the two were found together. Otherwise, it might be argued that, far from being predatory, the increase in wholesale prices that developed in 1973 was a policy that might have been caused by the operation of normal market forces. World events did tighten crude markets in 1973 and wholesale prices, even in competitive markets, increased.

This alternative explanation can be rejected for several reasons. First, there is the evidence from the 1968 squeeze that shows several majors following similar actions in both the wholesale and retail sectors that had the effect of squeezing the independents. This event cannot be explained by the type of crisis that developed in 1973. Secondly, the issue is not whether, in the case of shortages, wholesale prices should be expected to rise but whether it is natural to expect a squeeze on wholesale/retail margins in these circumstances. A related issue is the extent to which a squeeze of this sort should be classified as predation. The answer to both these questions suggests that the squeze could not be regarded as innocuous. For a squeeze might be expected from a monopoly model of a dominant firm faced with an increase in the costs of the fringe firms and, thus, a leftward shift in their supply curve. In this case, the dominant firm may well increase retail prices by less than the amount by which supply costs have increased for the fringe firms. Admittedly a retail/wholesale squeeze that develops from this situation is not so much an attempt to entrench the monopoly power of the dominant firm as it is a manifestation of the existence of that power. Therefore, while evidence on a squeeze may not be indicative of an attempt to extend a monopolistic situation, it is certainly compatible with the operations of a market dominated by one firm or a small group of firms which have a degree of discretionary power. Since this dominant firm monopoly model has proved to be so powerful in explaining the behaviour of the industry in other sectors, that it should also do so on the wholesale side merely confirms its applicability.

While the majors' behaviour, therefore, coincides with the dominant firm monopoly model, there is still the question as to whether there is a second explanation for the price squeeze that does not rely on the exploitation of market power. One such explanation might be based on two propositions, or variants thereof. The first proposition is that the petroleum industry sells to independents when product excess to their own needs is available, but does not when shortages develop. The second is that the majors maintain relatively constant prices in their branded sector to reflect long run average costs. In this case, independents' margins would increase and decrease as excess refinery capacity increases and decreases.

This explanation of the price squeeze does not accord with the evidence on the actual events at the time. First, Gulf's plans to increase

wholesale prices and their implementation of the scheme applied to the Prairie region — where independents were not being supplied by offshore product and where, therefore, no sudden shortage developed as offshore supplies were cut in 1973. More importantly, when Gulf was first implementing the squeeze in the Prairies, it indicated that it could not do the same in Quebec because of the existence of alternate sources of product from imports. This would not have been done if it was world shortages that were causing pressure on Western wholesale markets. Therefore the shortage argument is not applicable to Gulf's behaviour. This is equally the case for Shell and Imperial in Ontario. For there, the evidence indicated that Shell restricted supply to the independent sector prior to the events of 1973 that tightened world crude markets. This is not to deny the relevance of the shortages that developed. But, it should be emphasized that these shortages facilitated the attempt by the majors to squeeze the independents and enhanced the market power that they already enjoyed as a group.

While this argument casts doubt on the claim that the degree of the increase in wholesale prices was the result of a normal and acceptable functioning of the market, it does not determine whether the majors' actions only reflected the exploitation of existing market power or whether these actions were meant to enhance this power. The answer to this can be found in the fact that, simultaneous to the implementation of the wholesale policies described above, the majors followed a set of retail policies that were aimed at disciplining the independent, at driving him out of business, and at forcing the price of the independents up relative to the majors. Not only did the majors follow the two policies simultaneously, they also conceived of the two as being aimed at the same objective. By making their wholesale policy an integral part of their predatory retail strategy against the independents, their actions prove that this policy too was predatory in intent and in its application.

Apart from casting further light on the nature of the predatory behaviour employed by the majors, this section also illustrates another facet of the understanding that allowed the majors to function as a unit in such a way as to exploit their market power. In the marketing sector, where action from more than one major was required for effective predation, the harmonization of action was forthcoming. However, in marketing, the adoption of similar predatory policies was easier to achieve than at the refining level because prices and behaviour could be readily observed. At the refining level, coordination was more difficult because prices were not as easily observed. Nevertheless, the evidence on the 1968 price squeeze that Imperial led, or on the 1973 squeeze when Shell so carefully followed Imperial's lead, demonstrates that the majors also found it possible to reach an understanding at the refinery level similar to that effected in marketing. Even, as in the case of Gulf, where action was taken unilaterally because control of excess capacity was so heavily concentrated in

the hands of one firm, the action illustrates yet another interesting facet of the understanding among the majors. For Gulf's status in marketing was generally that of a follower. However, evidence adduced in the earlier sections on retail marketing policy showed that when placed in the situation where leadership was possible and expected, then Gulf readily adopted this role. Its actions on the Prairies confirm that this adaptability extended beyond marketing to refining. As such, it illustrates the flexibility inherent in the arrangements that bound the majors together. When the position of a firm required or allowed it to adopt a different role, it did so. In this fashion, the majors were able to adapt to varying circumstances, all the while maintaining the cohesiveness of a unit, and thereby to defend their monopolistic situation with various disciplinary practices.

J. *The Position of the Regional Marketers*

1. *Introduction*

In the previous sections, the manner in which the four national brand majors adopted a coordinated set of predatory or disciplinary policies at both the retail and wholesale levels was developed. Their purpose and effect was to maintain a costly, high-priced marketing system in the face of entry by a set of independent marketers. The course of wholesale/retail margins and their own evaluations of the effectiveness of these policies attest to the success of their programmes.

It must, however, be noted that the four companies whose programmes were studied in such detail did not control 100 per cent of the market. In some regions of the country the major national brands operated with as little as 70

TABLE 42
ESTIMATED RETAIL VOLUME MARKET SHARES, ONTARIO AND QUEBEC, 1967
(%)

Company	*Quebec*	*Ontario*	*Total*
Imperial	23.5	23.5	23.5
Shell	21.0	21.5	21.3
Texaco	13.5	13.5	13.5
B.A. [Gulf]	13.5	16.5	15.3
Petrofina	7.1	2.0	4.0
Sunoco	4.2	6.7	5.7
Supertest	2.0	5.2	3.9
B.P.	8.7	5.8	6.9
Miscellaneous	6.5	5.3	5.9
Total	100.0	100.0	100.0

Source: Document # 9388, B.P.[1054]

per cent of retail gasoline sales. There were a number of large vertically integrated firms who marketed only on a regional basis. For instance, as Table 42 shows, Petrofina, Sunoco, Supertest and British Petroleum accounted for some 20 per cent of the retail gasoline market in the combined markets of Quebec and Ontario in 1967.

An outline of the marketing policies of some of the regional marketers serves to demonstrate why the national brand majors, with market shares of less than 100 per cent, were so successful in maintaining high retail/wholesale margins. This outline shows that some of the regional marketers essentially aligned themselves with the majors, thereby permitting the actions of the latter to shape the policies of both groups.

Policies adopted by some of the regional marketers served to bolster the policies followed by the national brand marketers on two levels. First, their own marketing strategy basically copied that of the four majors — Imperial, Texaco, Shell, and Gulf. They adopted costly, high-priced distribution systems and did not attempt to expand via price competition as did the independent marketers. Secondly, they adopted one or more of the variants used by the national brand majors when aggressive predatory policies were aimed at disciplining the independents. Together these strategies reinforced the effect of those policies that were used so successfully by the national brand majors to constrain price competition.

The following sections examine the behaviour of certain regional marketers in Ontario and Quebec. Table 42 indicates that, for the two central Canadian provinces — Ontario and Quebec — Petrofina, Supertest, British Petroleum and Sunoco were the primary regional marketers. Therefore it is their activity on which the next section focuses.

2. *The Regionals' Branded Strategy*

The minor-major or regional marketers emphasized a marketing strategy based on non-price competition and a product service 'package' similar to the majors. They were even less efficient than the national brand majors with this strategy. As has already been demonstrated, one of the cost advantages the independents enjoyed was in the area of volume economies. Here the regional marketers generally fared even worse than the national brand marketers. A 1970 study by B.P.'s Marketing Department demonstrates their disadvantage. The results are reported in Table 43. It is evident that, in almost all cases, the station volume of the four regional marketers was less than that of the national brand majors.

Associated with higher costs was a certain vulnerability during price wars. For instance, British Petroleum commented on the disadvantage it faced in the event price competition broke out:

TABLE 43

COMPARISON OF AVERAGE THROUGHPUT PER OUTLET FOR COMPANY-OPERATED SERVICE STATIONS

Company	*Montreal*	*Quebec City*	*Ottawa/ Hull*	*Toronto* *Scar.*	*Toronto* *Etob.*
Esso	330.0	271.7	334.5	290	352
Shell	280.0	225.8	254.6	283	363
Gulf	227.0	180.6	199.5	237	250
Texaco	232.0	199.3	204.7	182	189
Sunoco	168.0	145.5	178.3	181	287
Supertest	178.0	172.5	192.4	190	160
Fina	199.0	130.6	130.0	152	120
B.P.	179.0	123.0	147.6	212	257

Source: Document # 9632, B.P.[1055]

"Being later in the site acquisition business than our major competition, our average site quality is considerably lower and, as a result, we can expect that our gasoline volumes, allied revenues such as rents and TBA to continue to be considerably lower than major competition on a per site basis. We can also expect that, in the event of price wars, our lower quality sites will be more affected than higher quality sites of the majors."

(Document # 11566, July, 1973, B.P.)[1056]

Other regionals recognized the same problem. Sun Oil, for instance, ascribed its low rate of return in marketing to its failure to achieve sufficient volume per station:

"WITHIN THE BRANDED SEGMENT, ADEQUATE RATES OF RETURN ARE DIFFICULT TO SECURE BECAUSE ANNUAL VOLUMES AND/OR REALIZATIONS ARE NOT HIGH ENOUGH TO OFFSET THE HIGH CAPITAL COST ASSOCIATED WITH 'AA' STATION DEVELOPMENT."

(Document # 85755, August 23, 1972, Sun Oil)[1057]

Irving, a regional marketer in the Maritimes, also admitted that the majors' concentration on non-price competition had led to many uneconomic retail outlets:

"The result has been the construction of many service stations which are not self-supporting and have to be subsidized by the oil companies. . . ."

(Document # 69, September, 1967, Irving)[1058]

Furthermore, regional majors like Sun Oil recognized that the advantage the unbrandeds enjoyed resulted from more than just economies of volume. Sun Oil described the discount outlets as being characterized by the following:

"1. Low capital investment relative to a branded outlet. . . .

2. Substantially lower expenses than a full service, branded outlet.

3. Pump prices up to 10¢ per gallon under full-service branded retail outlets.

4. Lower earnings per gallon offset by rapid turnover of gasoline."

(Document # 85250, November 1, 1972, Sun Oil)[1059]

In other documents, Sun Oil provided more detail on the cost differences between its own branded network and those of unbranded marketers. The unbranded segment, according to Sun Oil, enjoyed an advantage of only 0.53 cents per gallon at the wholesale level in terms of cost of product; an advantage of 2.6 cents per gallon in terms of lower marketing costs (credit cards, full service operations, maps, advertising, training, sales support), 1.08 cents per gallon in terms of lower investment costs (independent of volume considerations), and 5.27 cents per gallon in lower retail costs (salary, general upkeep of stations) (Document # 85263-4).[1060]

Other regional majors too noted that their disadvantage vis-à-vis the independents lay not just in the lack of volume economies. For instance, Irving observed that it engaged in a number of forms of costly non-price competition:

"Irving Oil Company Limited is opposed to the many costly special promotions, gimmicks, premiums and give-aways which have become prevalent in the gasoline industry. The Company considers such marketing tactics to be an unproductive expense to both the retail dealers and the oil distributors. . . . *This Company, however, has been compelled to engage in such practices in order to retain its share of the Nova Scotia gasoline market*."

(Document # 65-6, September, 1967, Irving)[1061]

Finally, it should be pointed out that the regional marketers not only knew their costs were higher than those of the unbrandeds, but they also felt their own high margins were unjustified. This is exemplified by the following excerpt from a British Petroleum document entitled "B.P. Gasoline Marketing Philosophy". Referring to the high prices that the majors had been able to obtain, it stated:

". . . there is currently about 16 to 18 c.p.g. between refinery gate wholesale prices and the consumer where list prices prevail. This is too high; gasoline can be distributed at about 12 cents if outlets have sufficient volume."

(Document # 9635, July 30, 1970, B.P.)[1062]

These documents make it clear that the regional marketers were no different from the majors in the problem that they faced. Their costly marketing strategy required high prices. The unbrandeds, by refusing to provide many of the costly elements of branded marketing strategy, were able to operate on smaller wholesale/retail margins and, thus, undercut the majors. Moreover, the public when offered the choice between the two 'products' began to move to the lower priced product. British Petroleum recognized that "gasoline is becoming and will become a commodity. All gasolines are the same and the majority of the public knows it" (Document # 9629).[1063] Sun Oil, too, recognized the

problem by noting that "most motorists find little difference in brands and tend to regard gasoline somewhat like a commodity" (Document # 83062).[1064] What is significant is that this happened as early as the late nineteen fifties. In referring to the success of the independents at this time, Sun Oil makes it clear that the "public flocked" to the discount outlets when offered the opportunity:

> "The unbranded marketer purchased wholesale gasoline and sold it at up to 10¢ less than branded. Generally, the public flocked to their outlets and they sold as much as three times more gasoline per station."
>
> (Document # 85307, March 29, 1973, Sun Oil)[1065]

It was the majors who, along with the regionals, adopted aggressive disciplinary policies that prevented this from continuing. The way in which the disciplinary policies of the two groups were meshed or served to reinforce one another is the subject of the next section.

3. *Imitative Subsidy Policies of the Regionals*

(a) *Supertest*

Supertest was one regional marketer that was so closely tied to its supplier that it could effectively be regarded as having litte scope for independent action. For many years, Imperial held the controlling interest in this company but sold it to the Thompson family in the early nineteen fifties (Document # 110482).[1066] Ostensibly, during the postwar period, this company operated as an independent integrated oil company exploring and producing natural gas and crude oil and supplying and distributing petroleum products primarily in the Ontario and Quebec markets. However, in reality, its refinery agreements with Imperial tied it to that company. The President of Imperial Oil noted:

> "For virtually all of its history, Supertest has operated under some form of 'shelter' agreement with Imperial. There has *never* been a normal customer-supplier relationship. . . . Supertest never adjusted itself to an independent operator's status — indeed, they leaned more heavily on Imperial for advice and technical support than our own branded operations such as Home and Champlain."
>
> (Document # 110482, August 20, 1971, Imperial)[1067]

The "shelter" agreements referred to by the President of Imperial in this excerpt were the 'allowance' or 'assistance' arrangements between Imperial and Supertest. These agreements meant that Imperial could be certain Supertest would closely follow its pricing policies. During the price wars that Imperial used to discipline the independents, it extended special subsidies to Supertest under the processing agreement to keep the latter 'competitive'. This ensured a degree of dependence of Supertest upon Imperial that militated against any independent action by the former.

The type of assistance granted by Imperial varied over the post-war era. In the early period, Supertest operated with a fixed margin guarantee from Imperial in the marketing of certain petroleum products. In the early nineteen sixties, this was changed to allow a discount — a form of voluntary allowance — to Supertest. The President of Imperial described these changes:

> "For many years the Imperial contract with Supertest provided a 'fixed margin' which protected them from the vagaries of market prices or supply costs. This guaranteed margin was a continual source of argument. In the late 50's the continuing appeals and pressures from Supertest led us to suggest that they build their own refinery and work toward a fully integrated position or get out of the business. They found that they had neither the financial nor managerial capabilities to get into the refining business and the difficulties of Canadian Oil provided added confirmation.
>
> . . .
>
> "During the severe retail price wars of the 60's, Imperial again came to Supertest's rescue by putting in a sharing agreement by which we took up a variable proportion of their price loss to keep them solvent. At the same time, we provided expert management help to modernize, consolidate, and in general improve the efficiency of Supertest's marketing and terminalling operations."
>
> (Documents 110483-4, August 20, 1971, Imperial)[1068]

The new allowance system that was implemented in the nineteen sixties increased the dependency of Supertest's prices on those of Imperial. The mechanics of the allowance system tied Supertest's prices directly to those of Imperial by setting the amount of assistance granted Supertest at a level equal to that being granted Imperial's own dealers. This meant that Imperial could indirectly lead Supertest's prices both down and up during the price wars that were aimed at independent marketers.

One example of this is provided by events in the Fall of 1971. As the majors attempted to lead a price restoration, Supertest lagged somewhat and received the following letter from Imperial informing them that their allowances would be cut back. On October 25th, 1971, Mr. J.D. Urquhart wrote Mr. S.C. Bacon of Supertest and stated:

> "Dear Stan:
>
> The payment of voluntary allowance within the framework of our processing agreement with your Company is made on the basis that the total amount of subsidy for formula purposes cannot exceed, on a per gallon basis, the average support provided by Imperial on retail gasoline sales to their dealers operating in the Supertest marketing area.
>
> "In September of 1971 we find a very significant disparity between subsidies paid by Imperial in Ontario, and those paid by Supertest.
>
> "We find that Supertest in September subsidized 1.916 MM gallons at a cost of $60,808 and provided allowances on 1.525 MM gallons at a cost of $49,103 for a total

of $109,911. Imperial's total subsidies and allowances for the period were only $7,186 on a total of .235 MM gallons.

"We therefore cannot accept your claim for subsidy support in Ontario in Zones 1 through 6 or Zone 9 for the month of September.

"So far as allowances are concerned, we are only prepared to accept your claim at Ottawa and even here Imperial has only supported 8 M gallons whereas Supertest is claiming 386 M gallons in the Ottawa/Hull area.

"We are prepared to accept your Quebec claims at the level shown."

(Document # 110493, October 29, 1971, Imperial)[1069]

Thus, during this period, Imperial reduced Supertest's subsidies to levels comparable to its own. This aspect of the Supertest/Imperial arrangement served to influence Supertest's prices and indirectly to tie them to Imperial's.

(b) *Sun Oil*

While Supertest's supply arrangements tied it closely to the majors, the behaviour of other minor-majors who possessed their own refineries was not greatly different. Sun Oil, for instance, also followed the lead of the majors as to pricing policy. During the nineteen sixties, Sun Oil regarded itself as a price-follower as the following excerpt indicates:

"Pricing will no doubt have to *continue* on a follow not lead basis."

(Document # 83091, July 7, 1966, Sun Oil, emphasis added)[1070]

In addition Sun Oil emulated the national brand majors with an expensive marketing approach and generally continued to stress the non-price strategy. In outlining marketing strategy in 1966, a Sun document recommended:

". . . the Board of Directors should adopt the following long range marketing objective:

"To achieve by 1971 a distinctive market position wherein Sunoco dealers have, and are known to have, a genuine interest in, and ability to consistently satisfy, motorists' car care wants, with a product-service package, which creates a customer-dealer relationship of complete mutual trust."

(Document # 83056, July 7, 1966, Sun Oil)[1071]

In subsequent years, Sun Oil's Corporate Planning Committee continued to stress their traditional high cost marketing techniques in response to the inroads being made by independents. This committee held numerous meetings in the early winter of 1967 but noted "it is significant that no entirely new concepts arose out of these discussions; the ideas and means of increasing gallonage are in most cases, simply improving things we are already doing" (Document # 83162).[1072] This meant increasing the number of Sun Oil's credit card holders, lengthening service station hours, increasing advertising and promotion, improv-

ing Sun Oil's image, procuring better dealers, having gala service station openings, and entering the diagnostic car care centre market. These were the very programmes that the nationals had developed in the nineteen fifties that led to high retail/wholesale margins. They were also used in the late nineteen sixties in the first attempt made to defend the expensive branded marketing networks from inroads by the price-competitive marketers.

Sun Oil not only adopted the majors' branded strategy; it also responded to the inroads made by independent marketers in a similar predatory fashion. For instance, Sun Oil imitated the majors by creating a second brand network that was meant to discipline the independent marketers. As the following excerpt from a Sun Oil document indicates, Sun Oil decided to set up a second brand chain in the early nineteen seventies to make certain the discount market was not 'perpetuated':

> "At Friday's meeting with you, the following operating plan for Unbranded Retail Outlets was evolved. . . .*to participate in but not perpetuate the gas for cash market*. We will not aggressively develop this section of the market but rather secure only a large enough share of it within Ontario and Quebec to assist in absorbing any extra productive capacity in the short run."
>
> (Document # 85231, October 20, 1971, Sun Oil, emphasis added)[1073] — memo from H.B. Maxwell to H.S. Ostrander. In July 1973, Maxwell was Administrative Assistant to the Director of Canadian Corporate Affairs Document # 87562, Sun Oil)[1074] and Ostrander was President of Sun Oil (Document # 87563, Sun Oil)[1075]

Sun Oil adopted this policy in the full knowledge that other majors were doing so and that together this would put some pressure on existing 'wholesalers'. The following excerpt from a Sun Oil document shows that entry into discount gasoline retailing was seen as a way of containing the independent sector:

> "With the possible exception of C.T.C., it is expected that wholesalers will find it difficult to grow since the entry of major refiners into discount gasoline retailing."
>
> (Document # 84742, October 4, 1971, Sun Oil)[1076]

Therefore Sun Oil's second brand policy, like that of other majors, was specifically aimed at the independents:

> "Dealing specifically with independents, we feel that the best way to compete with them is with a secondary brand. . . . "
>
> (Document # 85494, June 29, 1973, Sun Oil)[1077]

Sun's policy also reinforced that followed by the national brand majors with respect to the aggressiveness of the pricing policy adopted by the second brand chain. During the price squeeze aimed at the independents by Shell and Imperial in 1972-73, Sun Oil indicated that it intended to adopt a more aggressive strategy in price competitive areas than it had previously followed:

"In the retail gasoline market, the balance between branded and unbranded growth has been planned so as to parallel the expected pattern of growth in these two segments in the overall market. The percentage of retail volume through the unbranded channel will increase from 8% to 18% over the planning period. This balanced strategy will achieve active participation in both segments of the retail gasoline market and also allow *a more aggressive unbranded strategy in market areas where the branded market share or profitability are lowest*."

(Document # 83776-8, June 25, 1973, Sun Oil, emphasis added)[1078]

It is also significant that Sun Oil did not intend to perpetuate its system of lower priced gasoline stations. Its second brand network, like that of the national brand majors, was meant to be a short-term disciplinary tool. As a result, at the very inception of its second brand programme, Sun Oil carefully planned for a subsequent withdrawal from this market. The reason for this withdrawal once more illustrates the peculiar competitive characteristics of the majors' gasoline retailing network. Sun Oil recognized that as a number of the majors built up their second brand systems, they would dilute one another's volumes thereby over-saturating the market. Of course, it was this over-saturation that the majors, like Shell and Imperial, were relying upon to increase the unbrandeds' costs. In keeping with Sun Oil's goal not to perpetuate the discount market, it intended to withdraw slowly from the market at this stage as the following two excerpts indicate:

"(c) Divest debranded stations as the competitive advantage from pricing diminishes."

(Document # 87019, January 6, 1972, Sun Oil)[1079]

"By 1977, this market likely will be saturated and our volume is expected to decrease because the rebranded stations are generally on secondary retail locations. Once stations generate less than 200,000 gallons per year, they are to be divested. We assume that 10% of the outlets would be retained after 1977."

(Document # 84543, February 2, 1972, Sun Oil)[1080]

Thus Sun Oil deliberately invoked a second brand strategy aimed at the independents knowing that it was contributing to a joint effort that would control and not perpetuate the price competitive sector.

It was not just in the area of a second brand strategy that Sun reinforced the policies being followed by the four national brand majors. Sun Oil also copied the majors with regard to its use of allowance programmes. For Sun Oil generally regarded itself as a price follower as the subsequent excerpt demonstrates:

"In the hierarchy of successful major oil companies Sun is reputedly an agressive [sic] competitor but very rarely elects to lead in establishing prices, preferring to move its own prices to keep in line with one or two companies which are acknowledged leaders."

(Document # 85253, Undated, Sun Oil)[1081]

This policy extended to its use of allowances. In the following excerpts from its allowance policy, Sun Oil noted that as long as there was an acknowledged price leader, it would follow this company:

> "The above policy is based upon *normal markets* wherein *competitive companies* support *equally* their dealer margins on Regular and Premium grades and maintain their traditional 5 cents differential between the grades. When competitors depart from this policy it will be Sun's policy to adjust its Tankwagon prices on the basic blending agents to provide an average margin that is as comparable and competitive as the Custom Blending system and the irregular competitive practices will permit."
>
> (Document # 85333, December 15, 1972, Sun Oil, double emphasis added)[1082]

> "From time to time the posted retail prices and the competitive margins within a Price Area or a portion of a Price Area become so erratic and confused that there is no single definite leader or uniform competitive pricing practice against which to establish our normal price support policy.
>
> "In such cases with the approval of the Marketing Manager, posted tankwagon prices will be established to provide the dealers affected with an average margin comparable to that generally being provided to competitive dealers by their suppliers."
>
> (Document # 85334, December 15, 1972, Sun Oil)[1083]

Sun Oil's imitative behaviour extended from allowances to consignment as well. As the other majors moved to the more selective tool of consignment in late 1972 to combat the independents, Sun Oil considered following them for the same reasons — to avoid price discrimination charges and to permit resale price maintenance. In a June 16, 1972 memorandum, the regional Sun Oil representative in southwestern Ontario wrote:

> "...I want to go on record as expressing deep concern over our apparent lack of a tool which provides for 'pocket' price support versus instituting special allowances throughout a given market. . . . "
>
> (Document # 85365, June 16, 1972, Sun Oil)[1084]

> "The advantages of consignment in the general sense, as I see them are:
>
> (1) *We* control the retail price of gasoline which allows *us* to react quickly to any specific situation.
>
> (2) We support (less tankwagon realization) only where the posted street price justifies that action.
>
> (3) As a result of (2), we do not incur virtual theft of our dollars as currently is happening.
>
> (4) We can price in small pricing pockets without the risk of price discrimination action being taken against us.
>
> (5) Consignment does not involve complex agreements, procedures etc. as does a commissioned agent agreement.

> "I hate to sound like the average camp follower, but with most of our major competitors making extensive use of this tool, I would like to ask, 'What do they know that we don't?'"
>
> (Document # 85366, June 16, 1972, Sun Oil)[1085]

The proposals to utilize consignment were adopted by Sun Oil in early 1973 (Documents # 85352-430).[1086] The objectives set for Sun's consignment programme were:

> "(1) *To control the retail price of gasoline* through Sunoco branded retail outlets that meet one or more of the following criteria:
>
> (a) AA accounts selling between 150,000-400,000 (+) annually. (i.e. between purification and SMS).
>
> (b) A key location in a given urban market.
>
> (c) A single location in a given rural market.
>
> (d) A distribution channel (innovative or not) where the retail price of gasoline has a significant bearing on the success or failure of the venture by Sun's criteria.
>
> "(2) To develop a second tier of controlled outlets in the Sunoco branded retail chain as a corollary to the SMS accounts, both existing and future. [SMS Petroleums Ltd. — a Sunoco second brand].
>
> "(3) To increase Sun's per gallon profitability in the retail gasoline market (i.e. higher branch margins). . . ."
>
> (Document # 85382, April 10, 1973, Sun Oil)[1087]

In the long run, this policy was meant to increase "Sun's per gallon profitability." It was meant to increase the average retail margin — the same objective set for this policy by the national brand majors. This was to be accomplished by confining price competition and preventing it from spreading as the following Sun Oil excerpt indicates:

> ". . . if we go special allowance with Norm, we should go with all of Windsor, which would be inadvisable at this time. If we had a consignment vehicle, he could be competitive without having city-wide implications."
>
> (Document # 85366, June 16, 1972, Sun Oil)[1088]

Finally, the imitative nature of Sun Oil is once more illustrated by the procedure followed in drawing up their own consignment programme. A Sun Oil representative obtained a Texaco agreement and advised:

> "Texaco personnel unequivocably state that their document is on firm legal ground. For that reason, I recommend that it be used as a model for our agreement."
>
> (Document # 85389, April 10, 1973, Sun Oil)[1089]

(c) *British Petroleum*

Sun Oil was not the only regional marketer to evaluate the policy of the national brand majors. British Petroleum, for instance, observed that the majors had always disciplined an independent if it took too much gasoline away from the majors' networks:

> "As we all know in our industry the fully integrated oil companies have in the past always taken steps to protect their position and that of their dealers whenever they decided a discounter was attracting too much of the gasoline potential in a marketing area."
>
> (Document # 9003, February 19, 1971, B.P.)[1090]

One of the methods that British Petroleum noted was used for the purpose of controlling independents was the second brand network. The following excerpt indicates that British Petroleum regarded this as the method by which wholesale prices to the unbranded sector would be forced up:

> "Gentlemen, in my opinion, the majors are to blame for the tremendous growth of the jobber due to the long margins he is able to work on. I believe most of the companies today realize they have created a monster and must do something to control it. . . .
>
> . . .
>
> "I sincerely believe, gentlemen, that the companies are going to have to get the volume through their own outlets. This is a reason Shell, Imperial Oil, Sun have gone the route of de-identifying a number of their outlets in order that they can use up their own refinery production and be in short supply as far as selling the jobber at a low price. This will no doubt in time raise the price at all unbranded outlets and get the price more in line with the branded dealer."
>
> (Documents # 9801-7, June 20-22, 1972, B.P.)[1091]

Thus British Petroleum recognized that, together, the wholesale and second brand policies of the majors were aimed at decreasing the independent's margins. As the following excerpt indicates, British Petroleum also recognized that joint action on wholesale prices to the independent sector was desirable:

> "We believe that the frustrating retail selling situation that prevails today has been brought about by refining companies selling unbranded jobbers at prices where they are put in a position to make large profits by under-selling the oil company's franchised dealers from what would normally be *very uneconomic and very unsatisfactory locations* from the customer viewpoint as well as the company. We know that I.O. have apparently forseen [sic] eventual problems, in that they have consistently resisted selling to these unbranded jobbers.
>
> "One, naturally, wonders if I.O. are not now, in their wisdom, simply trying to show other refining companies the error of their ways. To accomplish this end, they are telling them that if they are going to insist on giving unbranded jobbers such a price advantage over their own franchised dealers, that it can be done much more effectively through outlets that they now actually own or control. If there is anything

to this assumption, might not I.O. welcome assistance by way of looking favourably on any other oil company joining them in more quickly bringing about a more sensible and stable retail market place."

(Document # 9003-4, February 19, 1971, B.P.)[1092]

This excerpt indicates that B.P.'s consideration of entry into second brand operations was meant to reinforce Imperial's strategy. It goes on to note the necessity of harmonizing policies in this area:

"Everyone seems to agree that this can only be accomplished through refinery sales people establishing a more realistic selling price to unbranded jobbers with branded and unbranded selling at the pump island as the focal point."

(Document # 9004, February 19, 1971, B.P.)[1093]

This at least indicates that British Petroleum considered acting in a similar fashion to the majors in order to constrain the independents. Certainly its objectives accorded with those, which it has already been demonstrated, were adopted by the national brand majors. For instance, in 1967, British Petroleum exhibited a concern with price competition and set as its objective an improvement in the prices being charged in "depressed market areas" and the attainment of "more stable prices":

"Improve control of pricing in depressed market areas to achieve more stable prices and wherever possible improve proceeds [profits]. In 1967, we will concentrate on direct pricing to the ultimate consumer. This program will be phased into future years to encompass other classes of trade to whom we wholesale products."

(Document # 10005, November 16, 1966, B.P.)[1094]

Therefore it is clear that British Petroleum, like Sun Oil, felt it should adopt policies that were meant to stabilize the major branded marketing system. While Sun Oil concentrated on consignment and second brand systems that duplicated those of the national brand majors, British Petroleum's concerns focussed on a wholesale policy that would have had the same effect.

(d)

(e) *Reaction in the Early Nineteen Seventies*

All of the above shows that the regional marketeers can be classified as following one or another of the variants of behaviour that were adopted by the national brand majors in order to discipline the independents. However, the circumstances of each company differed slightly and, therefore, the response that was adopted during the most severe periods of disciplinary price reductions varied company by company. But the variations in the reactions of different companies are less important than the similarities in their behaviour. Moreover, even when some of the regional marketers deviated slightly from the policies being followed by the national brand majors, they fell back into line once the pricing problem had been 'cleared' up. This is demonstrated by the events of late 1972 and early 1973.

Previous sections have demonstrated that the national brand majors mounted an intense attack on the unbrandeds at this time. Shell and Imperial led the way with the development of second brands and the implementation of consignment schemes that dropped the price of the brand to within 2 to 4 cents per gallon of the independents. Gulf and Texaco chose to rely mainly upon consignment and priced their brand equally aggressively against the independents.

The regional marketers varied their response depending upon their perception of their own circumstances and the value of their brand. Sun Oil had developed a strong brand image and, like Imperial and Shell, invoked a two-pronged approach — using both a second brand and consignment. Supertest, British Petroleum and chose to concentrate more on consignment programmes for their brand. Petrofina was observed to have led the downward movement in some areas. As outlined earlier, Shell recounted that, perhaps because the Petrofina brand was less valuable to the public, Petrofina stations, some distance from independents, suffered more than the other brandeds from the independents and led prices down in Montreal more than Shell would have preferred.

Sun Oil outlined the events of late 1971 when the majors attempted to raise prices in Ontario and Quebec and demonstrated that it was carefully following the majors with its allowance policy:

> "*PROVINCE OF QUEBEC*
>
> The 2.7¢ per gallon increase in Tank Wagon instituted in May is still holding in most areas of Quebec. The three main exceptions to this occur in the Shawinigan Falls are [sic] where the price 43.9 and Granby where the price is 40.9 and on the Island of Montreal where the price went from 49.9 to 39.9.
>
> "In late September Sun Oil Company put 43 of its stations on *special allowance* on the Island of Montreal with 2 being at 39.9, 5-7 at 41.9, 25 at 44.9 and the remainder at 47.9. Prior to September there were 19 stations on special allowance on the south shore off the Island of Montreal with them receiving price support since

early in the year. Most of these prices are in the 43.-44.9 range. On the Island of Montreal pricing areas are restricted to the centre north and centre east part of the Island. There has been no deterioration of prices by competitors since Sun Oil Company decided to meet the price competition on the Island one month ago. The volume of product sold in the Montreal Branch has reversed its previous trend; whereas in August the Branch was running 6% behind last year, the indications now are that we are running 12-15% ahead of last year.

"*PROVINCE OF ONTARIO*

From the first of September to the third week of September all the majors removed the *special support* in all markets west of the Energy Line. Sun Oil Company removed its subsidies in mid September. *Unfortunately the unbrandeds have not increased their street prices at all.* There were a few efforts in late September by some individual unbrandeds to raise the price 2-3¢ but they returned to their original pricing in all instances. In many cases the unbrandeds are 10¢ per gallon under the major brands, pricing at 41.9 versus our price of 51.9. *The indications are that the unbrandeds prices are not going to move up under the umbrella of the higher major prices.* In all cases Fina is marketing within 3¢ of the unbrandeds. In some cases Supertest accounts are marketing within 5¢ of the unbrandeds. Todate [sic] there has been no weakening of prices from Esso, Texaco, Shell, Gulf or BP, but some of the individual dealers are pricing 2-4¢ below the normal street price without support. *We are watching the situation carefully and expect that the retail price support will again commence to be instituted.* The exceptions to this are as follows:

North Bay—	Street price reduced to 47.9 and 48.9 from 52.9
Brantford—	Street price reduced to 49.9 from 51.9
Toronto,— north end of the city and suburbs	Unbrandeds 41.9 with some Supertest, Shell and Fina stations priced from 44.9 to 47.9."

(Document # 85452, Undated, Sun Oil, emphasis added)[1100]

In 1972 the majors, particularly Imperial and Shell, increased the disciplinary action against the independents using their second brands in a particularly aggressive fashion. Gulf, B.P., Fina, and Irving chose to price aggressively with their full-service branded outlets. A February 1972 Sun Oil document describes the various strategies of the companies at this time:

"*ESSO*

a) 'Econo' program: Gasoline with 'Autoshop' 5 cents off market plus 5% coupons with store. About 75 outlets.

b) Champlain outlets in Quebec market tend to be 2-3 cents off market. Most good sites are now converted to Esso.

c) 'Gas for less' approach in Ontario. Debranded tertiary sites 7-9 cents off market.

d) Esso brand high in price.

"*SHELL*

a) Beaver, Gasex, Alouette, Avanti Benzini approach. Gasoline at 7-13 cents off market. Mostly secondary sites. Many combined with premium shops. 50 outlets and expanding fast.

b) Shell is making maximum use of car wash cross merchandising. Maximum price in urban bay stations. Appear to have low price policy under Shell brand in smaller town markets.

"*GULF*

a) Unbranded chains 'Flash' and 'Gunning' acquired, not being exploited.

b) Gulf price policy is not quite as hard as that of Esso and Shell.

"*TEXACO*

a) Utilizing Regent in Ontario and a few unbrandeds in Quebec. 20 outlets. 7-10 cents off price.

b) Pricing policy appears to be slightly softer than that of Gulf.

"*SUNOCO*

A few second brands in Ontario. Very sensitive to price with Sunoco brand.

"*FINA*

No second brands. Meets every price in sight.

"*GOLDEN EAGLE*

Price cutting leader to establish markets. Purchases in Ontario market still operating under previous brands at low prices — 3 tto [sic] 10 cents off market.

"*IRVING*

Price cutting in Quebec areas, in many cases to Calex levels."

(Document # 11600-1, February 11, 1972, B.P.)[1101]

The various positions of the companies one year later are also outlined by a Sun Oil document. By this time, Supertest and British Petroleum apparently had adopted the low branded pricing strategy of Gulf and Fina:

"Independent unbrandeds continued to gain share of many markets in 1972, with particular emphasis in areas surrounding big cities. *Shell* and *Imperial*, to combat this, have continued to expand their respective unbranded chains of outlets in both Ontario and Quebec. *Texaco* appear to be in a hold position on numbers of unbranded outlets. *Gulf*, *B.P./Supertest*, and *Fina* appear to be fighting these inroads in market share by lowering the price on their own branded gasoline. Fina has had this posture during the entire year of 1972 but Gulf and B.P. apparently adopted this policy in July of 1972. Since that time prices have trended generally lower."

(Document # 84805, February 13, 1973, Sun Oil, emphasis added)[1102]

While the strategies of the majors and regional marketers varied, they were all aimed at getting the general price level to increase. As the 'aggressive'

policy of the majors began to work, the regional marketers quickly moved back to the level of the national brand marketers. In early 1973, Sun Oil observed that the unbrandeds had suffered a decline and would continue to do so. In commenting on the unbrandeds in Sun Oil's Hamilton region, it was noted:

> "It is generally agreed that, as prices firm up across the Branch, there is also a decline in the effect of the unbrandeds to the brands.
>
> "This is supported by the increasing numbers of unbranded accounts which appear to be looking for branded suppliers.
>
> "In the last six months aggressive pricing by the Brands has contributed greatly, it is felt, to the volume increases which have been shown.
>
> "As a result, only the unbrandeds operating on a long term contract will be in a position to draw large volumes by low pricing.
>
> "The shortage in supply should curb, in the short run, any significant growth in the unbrandeds, thus allowing the branded outlets to maintain a larger share of the market than during the previous three years."
>
> (Document # 85476-7, August 17, 1973, Sun Oil)[1103]

British Petroleum, too, noted that the independents were suffering at this time and stressed that this would continue because they would have increasing difficulty in obtaining supply:

> ". . . independents are finding increasing difficulty in securing supplies, certainly supplies at the traditionally depressed prices of recent years. This is a simple reflection of world wide tightening of sources of supply coupled with surging demand. Consequently, the price spread between the majors and the independents has been narrowing as much by the latter coming up to the levels of the former as the other way around. But, more importantly, physical supply limitations are making it difficult for the independents to expand and in some cases, forcing them to retrench. . . ."
>
> (Document # 11645, April 23, 1973, B.P.)[1104]

The independents' advantage had not depended upon their paying unduly low wholesale prices as the majors themselves realized. During this period of tightened supplies, the majors, as the last section has demonstrated, used their increased control over the independents' supply source to effect one-half of the two way squeeze they were using against this sector. This excerpt from British Petroleum further indicates that this policy met with success.

As the unbrandeds were squeezed, the majors used this opportunity to move prices upwards by removing their subsidy programmes. At the same time the majors continued to monitor unbranded prices and to put pressure on them, especially with their second brands, to follow the upward movement of the majors' 'umbrella'. Furthermore, Sun Oil, B.P. and followed closely.

The following Sun Oil document instructed Sun Oil's retail managers to quickly follow the national brand majors as they raised prices to "normal" levels so that the process would be encouraged:

"We therefore suggest that in any market where you see our competition trying to raise their prices back to the normal levels, you follow as quickly as possible. We are not suggesting that you lead the price back to normal conditions since in most markets we would be unable to do so as we do not have a large enough share of the market. However, by following promptly, you will ensure a better chance of the market returning to its normal position."

(Document # 85563, October 30, 1972, Sun Oil)[1105]

British Petroleum also followed the majors in increasing prices. The following excerpt indicates this company 'keyed' on Imperial and Shell:

"The Company [ie. BP] increased its posted prices for gasolines. . . east of the national energy line, by one cent per gallon on the 27th of April, the increase applying to all classes of trade except where precluded by contractural arrangements. At the same time, *keying on the competitive activities of Shell and Imperial particularly*, we have raised the level of pump prices at price-supported retail outlets in both Quebec and Ontario to a minimum of 49.9 cents per gallon (with a few exceptions), versus normal full prices of 52.9 and 53.9 cents per gallon in the Montreal and Toronto Metropolitan areas respectively and the quite general level of 41.9 cents per gallon which prevailed in price war areas before this upward trend began."

(Document # 11442, May 9, 1973, B.P. emphasis added)[1106]

By May of 1973, British Petroleum reported that they were at "the top of the market" along with Shell and Imperial (Document # 11591).[1107] By July of 1973, British Petroleum had virtually withdrawn all price support (Document # 11427).[1108]

In conclusion, the reason the four national brand majors were able to successfully implement a strategy that maintained high retail/wholesale margins and that restrained the growth of price competition was that the threat of competition came from an extremely narrow segment of the industry — basically the non-integrated marketers. The fringe group of vertically integrated firms could be relied upon to maintain high margins, not to cut prices and, in times of disciplinary price wars, to support the branded sector against the independents.

K. *Knowledge and Coordination*

The gasoline marketing section has examined the character of competition among the large integrated companies and the practices used by these firms to restrain price competition emanating from the independent sector. The majors understood their common interests — the need to protect their high cost branded distribution networks — and perceived a common threat — the more efficient independent marketers. The majors directed predatory or disciplinary policies at this independent sector. Each major evaluated the actions of the other majors, and with an appreciation that these policies were predatory or disciplinary in intent or effect, adopted policies which best suited its own situation but which contributed to the common objective of containing the independents. The knowledge that these firms used in implementing their strategies was obtained in some instances, by inter-firm communications.

Some communication took place at the refining level. These communications generally related to the negotiation and operation of refinery agreements. By communicating investment and expansion plans, the major refiners provided one another with the type of information necessary for the establishment of harmony within the oligopoly. The majors took care, via their communications at this level, to maintain stability among themselves and to reduce price competition coming from the independent sector.

Communications at the refining level that served to restrict competition from the independents were aimed both at controlling the supply of product to the independents and at influencing the product price charged the independents.

A second example that suggests wholesale policy was being coordinated among the majors is provided by the following Gulf excerpt:

> "Mr. J. Carey outlined the market environment in the Maritimes. Imperial Oil are going to reduce discounts. Unhappy with market. Will try a few months. British American Oil has lost business just recently. Texaco never bids unless they make a profit. They are not satisfied with their share of the market. Fina has some uncertainty but wants more realistic prices. Irving felt the same — something has to be done.
>
> "Imperial Oil are not loaning equipment or paying installation or service if 25,000 or less. British American Oil will follow. Have not talked to Shell Oil. They are still discounting rather hard but seem to want to firm. Some businesses are different than others and should be evaluated on an individual basis. No sign yet of firming of prices. Long discounts are not sensible and cannot be justified. Whatever policy is set up will be reviewed at least monthly and assessed on the impact and what way to go."
>
> (Document # 65412, November 13, 1968, Gulf)[1114]

Evidence from the refining volume also shows that certain communications both between refiners and wholesalers as well as between refiners and independents were aimed at forcing retail prices up. One example recounted previously showed that an independent retailer in Winnipeg was threatened by Imperial with supply withdrawal unless the independent raised its price. Imperial also held discussions with Anglo-American as to the prices being charged by some of the independents being supplied by Anglo-American. Both Husky and Tidewater applied pressure to an independent to force the latter to increase his pump price. Another independent, in Vancouver, was directly informed by several majors, including Gulf and Imperial, that he would not be allowed to price below a certain level.

Communications that impacted upon the competitive process were not restricted to the refinery or wholesale sector. Communications at the marketing level also served to facilitate the adoption of common policies by the majors. An Imperial official indicated that he found it useful to discuss with other firms "levels of pricing in an effort to create a spirit of co-operation in eliminating as far as possible sudden ill-considered moves by competition through misinterpretation of an action of any particular company" (Gasoline Western, Document # 85).[1115] An example of the way in which Imperial acted so as to avoid the type of misunderstandings that might lead to rivalrous behaviour occurred in Winnipeg. In 1967, Imperial developed a pricing strategy that was aimed at sending a 'message' to Dominion Motors. But Imperial became concerned that this strategy would trigger some action from a Texaco dealer in the same area. As a result, an Imperial Oil official recommended that its dealers and the Automotive Trade Association be informed that continuation of this strategy was due to Dominion's "refusal to steady the market":

> "This is the third time we have discounted at 3¢ off. As Dominion have not moved to 2¢, I don't believe they ever intend to. We could try once again and hold the

position for a week to 10 days. However, this would no doubt trigger some action from the Texaco dealer just south of Norwood Esso.

"If we intend to establish the Independents at 2¢ below the majors, we will have to take the gamble. In doing so, we should make it very clear to our Dealer organization and the A.T.A. that it is the result of Dominion's refusal to steady the market."

(Gasoline Winnipeg II, Document # 368-9, November 19, 1967, Imperial)[1116]

Communications such as this would have served to coordinate the disciplinary strategies that each major followed and to avoid misunderstandings among the majors that might have caused price competition to spread.

Shell also indicated concern that its disciplinary actions not be misinterpreted by the other majors. Examples were recounted earlier of Shell's representatives communicating with Imperial representatives in the late nineteen fifties price wars. These communications informed Imperial that Shell's actions were directed at certain independents.

Other examples of communications exist to show that the majors contacted one another to prevent misunderstandings on pricing policies. During the period when Imperial was developing a strategy to use against Dominion Motors in Winnipeg in 1967, Texaco became concerned about the pricing practices of some Imperial dealers and contacted Imperial to see if Imperial's pricing policy had changed. A Texaco official stated:

"I contacted Imperial Oil & they state their pricing policy is the same as ours.

"If you can secure an invoice please submit for evidence please do so as they have advised they are not discounting.

"Re retail prices, no oil company is on consignment therefore the retail prices is [sic] entirely the dealers responsibility."

(Gasoline Winnipeg II, Document # 405, June 10, 1967, Texaco)[1118]

Approximately three weeks later Texaco became concerned about the price zones existing in the Winnipeg area. In the following exerpt, Texaco noted that B.A. (Gulf) and Shell were going to retain a structure that was acceptable

but that Imperial had to be contacted because one of its dealers offered a potential problem:

> "The Warren Manitoba DTW prices are correct for all oil companies but north of this Town we are experiencing different DTW selling prices. Texaco, Shell and B.A. are selling to their dealer organization at the corrected posted prices as per the zones or our radius, however the Imperial Oil Agent at Warren is selling refined products at Woodlands, Lake Francis and St. Laurent for the posted refined prices at Warren thus creating a wholesale discount of $0.015 per gallon.
>
> "B.A. & Shell are going to maintain their price structure and I recommend we do likewise, but I would request your assistance and ask that you call the I.O. Division Manager and endeavour to have Warren I.O. Agent use the correct zone price."
>
> (Gasoline Winnipeg II, Document # 407, June 29, 1967, Texaco)[1119]

There are also examples of discussions between company representatives about the pricing practices of their own dealers who were discounting. Examples of these communications have already been quoted showing company representatives reassuring one another that a local price cut had not been initiated by the major but by a 'maverick' dealer and that pressure was being exerted to return prices to higher levels. The following is one such example taken from an Imperial document:

> "On January 6th a further telephone call was received from our Rivers agent advising us that a North Star dealer (Decker & Sons) had just dropped his price to meet Brandon retail prices and had posted a sign advertising this fact. *We immediately contacted the Brandon North Star Oil representative who advised that he did not cover the Rivers area, however he indicated that North Star Oil were not subsidizing this dealer and that he would convey this information to the North Star representative in Neepawa with a view to getting the North Star dealer in Rivers to raise his price.*
>
> *"On January 7th the writer received a telephone call from the local Canadian Oil Company representative, who also have an outlet in Rivers, expressing concern over the action of the North Star dealer and wondering what we were going to do.* We explained that we were going to give North Star Oil a few days in which to get their dealer to raise his prices.
>
> *"On January 9th we contacted you and explained the situation and you further advised that after a discussion with North Star Oil management in Winnipeg, that North Star Oil were definitely not subsidizing this dealer and that they were endeavouring to get him to raise his prices.*
>
> *"On January 10th we were successful in contacting a Mr. Tom Woods, the North Star Oil representative at Neepawa, who confirmed that they were not subsidizing the Rivers dealer, that they were very concerned about his pricing situation and that they would do everything possible to get him to return to a normal Rivers price situation.* He stated that he did not expect to be in Rivers until January 12th or 13th and that he would advise of the outcome of his conversation with their dealer. *About an hour following the first conversation with Mr. Woods he telephoned again,*

indicating that he had been in conversation with Mr. Ashford of the North Star Oil, Winnipeg. Mr. Ashford confirmed that he had been talking to you and that he and you agreed that while North Star Oil were not subsidizing this particular dealer, and it was an unhealthy situation, and one that would likely trigger further price cutting activities, there was however no need to panic."

(Gasoline Western, Document # 160, January 11, 1961, Imperial, emphasis added)[1120]

Other examples show that company representatives discussed with one another the implementation as well as the withdrawal of subsidy programmes. For instance, the following excerpt from a Husky document illustrates the type of information exchanged during a price increase in 1967:

"Imperial Oil have begun to remove consignments — Texaco will have all consignments removed by next week — Shell and B.A. have not done anything as yet.

"The prices to dealers is remaining the same e.g. no. 2 gas posted 21.1 less 1.0 temporary dealer allowance for a net of 20.1. Most company reps feel that a new posted will be issued reducing the posted price by 1 cent and removing the allowance. It will not be an increase of one cent as was assumed.

"The companies eliminating the consignment are not replacing same with any other type of consignment. All dealers will own their own product."

(Gasoline Winnipeg II, Document # 156, March 2, 1967, Husky)[1121]

Discussions among sales representatives occurred in the Lakehead area during the implementation of a subsidy programme to meet the competition of a Simpsons-Sears outlet. A Shell representative discussed with other sales representatives their attempts to put dealers on allowances following Imperial's pricing action. The Shell district manager observed that both B.A. (Gulf) and Shell dealers were waiting to see what effect Imperial's prices would have on volumes before going on allowances:

"Commizzi (Esso) claims the reason for his depressed price is because of his very direct competition with Simpson Sears (not far away) who are at .479 and .529"

(Gasoline Winnipeg II, Document # 86, September 21, 1968, Shell)[1122]

"The B.A. rep advises that he has had the same problem with his lessees and it would appear the B.A. and Shell operators are watching the market as we are to see if Esso's depressed price will have much effect on throughputs."

(Gasoline Winnipeg II, Document #85, September 26, 1968, Shell)[1123]

Shell's district manager intended to meet with representatives from other companies to obtain "gallonage readings":

"I hope to get some accurate statistics from Esso, B.A., & possibly Texaco reps s.a.p."

(Gasoline Winnipeg II, Document # 87, September 26, 1968, Shell)[1124]

"The Port Arthur sales rep and myself are arranging a meeting the early part of next [sic] with competitive sales reps to get some actual gallonage readings. (This had to be postponed from this week)."

(Gasoline Winnipeg II, Document #84, September 26, 1968, Shell)[1125]

Communications among the company representatives at times like this would have facilitated the implementation of a subsidy programme without a breakdown in oligopoly discipline. Coordination was required if independents were to be punished quickly and a price restoration was to be accomplished at a later date.

The excerpts quoted above show that the majors used direct communications to avoid 'misunderstandings' or to provide leadership during upward price movements. They also employed indirect communications for the same purpose. Price increases were often coincident with and occasioned by withdrawal of subsidy programmes. As evidence has indicated, both Imperial and Shell devised their withdrawals in such a way as to communicate their intent to other majors. In one example, Imperial withdrew allowances and this 'news' was "purposely given" to its dealers in order to leak the information to other oil companies (Gasoline Western, Document #580).[1126] The evidence indicates that Shell also leaked information, but, used industry publications for this purpose. When Shell was trying to move prices up in the early nineteen seventies, it noted that "a public announcement of our intention may be needed to get other companies [sic] attention in the present confused market" (Document #32979).[1127] Shell's Central Region Marketing Manager, in writing to the Vice President on the need for communication noted:

> "As you know, we have been concerned over the general erosion of retail prices in our Region. The Retail Department held a District Sales Managers' meeting last week to assess the situation in relation to perceived competitive strategies, our own activities, alternatives which may be used to improve the situation and a recommendation.
>
> . . .
>
> "Restoration date has been set for Monday, November 13th, giving us ample time to organize our monitoring systems and companion strategies, while also allowing our major competitors time to assess their October results. This, hopefully, will be favourable, i.e., Esso with Hockey Pool and Gulf with aggressive pricing and multi-promotions.
>
> "We also feel it most important to publicize our actions through our Public Relations Department so that there is little chance of misinterpretation by anyone. It will be a delicate communique requiring tact and diplomacy."
>
> (Document # 58567, October 26, 1972, Shell)[1128]

In addition to the above, there is evidence that marketing officials of various companies held discussions on a variety of subjects that were of mutual interest. A document dated April 25, 1972 outlines a meeting held between senior officials of Gulf Oil and Texaco. The report of this meeting indicates that for the most part, the discussion related to the operation of the Oil Heating Association of Canada. However, other subjects were discussed. In particular, information was exchanged concerning the majors' structure on handling

independent accounts and the use of consignment selling. Also discussed was any information Gulf had regarding Texaco:

"Mr. Walker had one or two general points to discuss; one was our structure on handling private brand accounts. I told him that this was handled within our line under Wholesale. They still have not defined clearly Bill Dumsday's activities, but it is in Mr. Brown's Department. I mentioned that Mr. Urquhart in Imperial Oil was outside the line.

"They are interested to know what our program is on consignment and I outlined this in general terms. They are concerned with the new formula on taxes as of July 1, 1971 which gives the private branders — such as Co-op — a break against majors. I said I would look into this. Mr. Walker is of the opinion that Shell are moving aggressively on a spot support basis to improve market share. He advised that they were trying to put together demand supply plans for the industry in the West and wished to know if the information was available regarding Texaco Canada. I told him his best plan would be S. & T through theirs. What he wants to know is if our Edmonton-Regina deal with Co-op is a straight exchange and what our net purchase arrangement is (volumewise with Shell or others in the West)."

(Document #49721, April 25, 1972, Texaco)[1129]

On October 9, 1972, an official of Texaco and the Imperial Area Manager in Ontario discussed Imperial's wholesale and retail management structure (Document #49746).[1130] On October 31, 1972 a Texaco official discussed Imperial's method of handling jobbers (Document # 49745).[1131]

Still other evidence indicates that marketing officials of the integrated companies held discussions on matters relating to other petroleum products. These discussions too would have served to reduce competition. In September of 1966, the Fort William Division Manager of Husky Oil reported that Husky was "having problems" in regards to their diesel fuel business. The problem was attributed in part to the loss of two trucking accounts and, in part, to the fact that "one Royalite and one Shell station are cutting prices rather drastically." This Husky official reported:

"We are still having problems here in regard to increasing the trucking business. This is due to the fact that one Royalite and one Shell station are cutting prices rather drastically, and also to the loss of Gill and M & P as previously mentioned. We do have a good operator and we are making progress, and at the present time, rather than trying to meet the present discounts being given we are working with the oil companies in attempts to have the price brought up."

(Gasoline Winnipeg II, Document #120, September 22, 1966,, Husky)[1132]

In a subsequent report, the same Husky official stated:

"I had previously mentioned to you that we were again having price-cutting problems on diesel fuel in the Lakehead area and it was at first thought that we were going to have to reduce our diesel prices. However, in conversations with B-A, they advised that they will straighten out their lessee in Nipigon and we have therefore desisted from making any further concessions. We will, no doubt, have to put in a

rental reduction until the problem is straightened out but it does look encouraging. Our main difficulty is with Shell and Royalite and this is also being worked on."

(Gasoline Winnipeg II, Document #123, October 18, 1966, Husky)[1133]

Three days later on October 21, 1966 the Royalite Western Region Manager reported on a conversation which he had with "our friendly competitor" who suggested that Royalite were "upsetting the Diesel market at the Lakehead." The Royalite official indicated to his Winnipeg office that they may wish to call a B.A. (Gulf) official directly about this matter:

"I had a call from our friendly competitor today suggesting that we are upsetting the Diesel market at the Lakehead.

"What is our position on diesel sales to truckers? I seem to recall that Mel mentioned a .025¢ discount being given almost without exception. Just after the call Alex Cassan dropped by and I was able to question him about this same time. He agrees that we are selling for approximately 40.1¢, but he didn't agree that the market is as stated by our opposition, a firm 42.5¢.

"Let me have your comments after you have had a chance to look into this situation. You may wish to call Fred Westcott direct."

(Gasoline Winnipeg II, Document #323, October 21, 1966, Royalite)[1134]

Further discussions occurred between Royalite and B.A. (Gulf) over the pricing situation in diesel fuel. A Royalite official reported on July 4, 1967 about a meeting he had at the B.A. district office in Fort William. The B.A. official indicated that "Imperial and B.A. dealers were complaining that Royalite Service . . .were cutting prices on diesel fuel" (Gasoline, Winnipeg II, Document # 329).[1135] The Royalite official denied the discounting but the B.A. representative produced an invoice showing a 2¢ discount. As a result, Royalite agreed to drop its discount:

"In answer to your memo of June 28th 1967 in regard to diesel fuel sales through Queen & Memorial, Port Arthur, Ontario.

"About two months ago when in Port Arthur, I called in to see Mr. Avison at B.A. district office in Fort William. At that time Mr. Avison said that through co-operative efforts between Oil Companies, they were slowly but surely getting a uniform price on diesel fuel in the Lakehead area. However, apparently Imperial and B.A. dealers were complaining that Royalite Service at Queen & Memorial were cutting prices on diesel fuel. This I quickly denied. However the unfortunate mistake was made, and Alex showed a two cent discount on a credit card invoice, which was picked up by two dealers, one Imperial and the other B.A. A photo copy of this invoice was produced by Mr. Avison. Therefore I could not deny that a discount was given to this particular trucker.

"After lengthy discussions, I finally agreed that we would drop our discount with the understanding that if and when I found proof of other dealers giving discounts, we would again start discounting."

(Gasoline, Winnipeg II, Document #329, July 4, 1967, Royalite)[1136]

Apart from this example which relates to diesel fuel, there is also evidence to show that discussions took place in other areas. For instance, in the late nineteen sixties, Texaco and Imperial discussed the credit terms that were being offered to farm agents. Following these discussions, a Texaco official recommended the adoption of practices similar to those of Imperial in order to "straighten up" the market:

> "As a result of our discussion at our recent District Managers' Meeting regarding this subject, *I recently had an opportunity to discuss the matter with Imperial Oil.*
>
> "I confirm that I.O.'s practice as far as Manitoba is concerned is identical with ours; they provide their agent with a credit limit which in turn allows the agent to give the farmer 30-day billing. As we suspected, although the notice says it is a 30-day limit, it actually is 42 days.
>
> . . .
>
> "*They view this action as the first opportunity in 40 years to straighten up the credit practices of the major oil marketing companies in the farm market.* They expect to see some support and although it is their understanding that Royalite are following their practice, they see no signs of a movement by other competitors.
>
> "It is my firm recommendation that we institute immediately in Manitoba a similar system to that presently in effect with I.O. agents. . . .
>
> . . .
>
> "It is my impression that unless we make this change in our procedures, that we shall see a golden opportunity slip through our fingers, and accordingly I will appreciate your assistance in getting this policy underway in Manitoba just as soon as possible."
>
> (Gasoline Winnipeg II, Document #403, May 16, 1967, Texaco, emphasis added)[1137]

Another example of discussions on a price-related matter can be found in the events that surrounded the general removal in the early nineteen seventies of free oil burner service. The following excerpt from a B.P. document indicates that discussions occurred about the removal of free burner service:

> "In response to your recent request asking that an investigation be made *regarding the suspension of free service, which we understand will be put into effect by Shell, on September lst., I am pleased to report as follows*:
>
> "*IMPERIAL OIL*
>
> *I talked to Al. Lapierre of Champlain Oil* who told me that after carefull [sic] consideration they have decided that current high prices for fuel oil makes it a very poor time to cancel free service and that it would probably be at least another year before they would make such a move.
>
> "*JOSEPH ELIE LTEE*
>
> *A discussion with Mr. Douin, Marketing Manager*, disclosed that they would follow the trade in cancelling free service but would be reluctant to make such a move

at this time. They contend that it would be very difficult to handle PRP's customers, and in any case they are obligated to free service on their hot water heaters of which they have a large percentage.

"*GULF OIL AND TOLHURST*

Both Louis Blais and Ralph Yale are sympathic [sic] to the idea of cancelling free service but feel it would be better to modify this and continue to offer the customers the free summer cleaning.

"They both feel that by doing this the customers' equipment would be kept in better condition thereby eliminating many of the service calls."

(Document # 9167, July 20, 1973, B.P., emphasis added in paragraphs only)[1138]

This was not the only instance of discussions on matters that would have affected the implicit price paid by a customer. In one location in the Maritimes, the majors were apparently able to reach agreement on the degree of non-price competition that would be allowed. For instance, the following excerpts indicate "all operating oil companies" in the Lincoln area of New Brunswick reached an agreement on non-price competition in 1960:

"Mr. A.H. Buckley in his Weekly Field Report dated December 17 reported that the *B.A. Station in Lincoln, N.B., has instituted a 'gimmick' or giveaway program contrary to an agreement made by all oil companies in that area.* Mr. Buckley further states that you are investigating this matter."

(Gasoline Atlantic, Document # 285, December 22, 1960, Petrofina, emphasis added)[1139]

"With reference to my letter of above file and subject dated January 4th, 1961. Please be advised that a further report has been received from our representative in the Fredericton Area, Mr. G.D. McArthur.

"Mr. McArthur reports that a visit to the B/A station at Lincoln reportedly practicing in give-aways was confirmed.

. . .

"Our report received from Mr. McArthur is to the effect that the B/A representative in the area is very conscious of this program and approves and permits its operation.

"*A check or verification could be made with Mr. J.P. Kennedy to determine if this contravenes whe [sic] agreement reached between all operating oil companies in the Lincoln area that was arranged at the time of the cessation of the price war in August 1960.*"

(Gasoline Atlantic, Document # 287, January 26, 1961, Petrofina, emphasis added)[1140]

In summary, communications such as those exerpted above served to enhance and to strengthen the linkages that drew the majors together into a unit. The major oil companies and the regional marketers had common interests in the gasoline marketing sector. As Imperial noted the major companies had ". . . a similar consumer offering involving wide representation, the same price, retail credit, heavy advertising, etc." (Document # 118390).[1141] These firms

practised mutual forebearance with respect to price competition. As Gulf noted there was "marked reluctance on the part of the integrated companies to compete with each other in the retail market on the basis of product price" and the price equilibrium which was established was "fairly comfortable" (Document # 60122).[1142] These same companies recognized that the more efficient sector threatened the majors' branded price structure. In reacting to this threat, the integrated companies acted as a group.

Generally, the majors were able to harmonize their policies at the marketing level without resort to many communications. But when they were needed, they contributed to the majors' ability to avoid misunderstandings that would have prevented them from containing price competition coming from the independent sector or other sources.

The significance of the communications lies not only in the dissemination of information that was accomplished; but also in the intent to forge a common policy that it demonstrates. It is one thing for each firm in an industry to arrive unaided by colloboration at policies resembling those adopted by others. It is an entirely different matter to use bargaining stances, communications, and cooperation to strengthen the existing tendency to adopt similar strategies.

Maintaining discipline among the majors throughout the period required that they coordinate policy in several areas. Because of the "marked reluctance" to compete on the basis of product price, a price level had to be established that provided the "fairly comfortable" margins. Reassurances had to be given when a retailer reduced his price without 'permision,' that this was not a competitive or aggressive action against other members of the unit. Methods of dealing with outsiders had to be found that did not lead to a general outbreak of price competition. The evidence presented in this volume shows that despite the seemingly large number of problems that had to be tackled, the industry managed to find solutions that, for the majority of the post-war period under study here, kept wholesale/retail margins at 'excessive' levels.

While the communications presented herein were not primarily responsible for the major's successful containment of competition they did contribute to this goal. Discussions relating to 'maverick' dealers served to disseminate information that a company had not changed its general pricing policy. So too did information that the target of a price reduction was the independent sector. Both of these served to contribute to the perpetuation of mutual forbearnace among the majors. The latter also served to harmonize the disciplinary strategies employed against the independents. When dealer representatives coordinated the introduction of allowances, they served to harmonize disciplinary strategies and also to maintain trust in each other — and thereby solidified the ties among the majors that so successfully kept retail/wholesale margins at high levels generally. Finally, the communications that accompanied subsidy withdrawals and price restorations aided in re-establishing high prices.

L. *Summary*

No one sector of this vertically integrated industry was sufficiently similar to the others that the majors could rely upon the same device to deter competition in each area. The domestic production sector was characterized by a relatively large number of firms. Thus coordination among most of the firms was required in order to establish prices. In the case of the offshore crude market, the number of participants was small and the harmonization of transfer pricing policies was accomplished without the type of formal pricing mechanisms used in the domestic production sector. This was also the case in the marketing sector even though it was characterized by structural traits that partially resembled both of those described above.

In marketing a small number of firms dominated each regional submarket. This group of firms included the four majors — Imperial, Shell, Gulf and Texaco — who operated in most areas of the country. There were a number of other firms. There were certain integrated firms such as British Petroleum, Sun Oil, Petrofina, Irving, Union and Standard Oil of British Columbia who were represented in various regions of Canada. In addition, there were a number of independent marketers. These independents relied either on the integrated companies or imports for their product supply. The independent sector included a wide variety of firms ranging from relatively large mass-merchandising type organizations to small one and two station operations.

Notwithstanding the existance of a fringe group of independents, the majors controlled anywhere from 60 per cent to 90 per cent of the gasoline market. Moreover, the same firms that dominated the gasoline marketing sector also did so at the refining and production levels. Because of the agreements and arrangements that drew these firms together in the refining and production sectors, these firms developed a community of interest in the marketing of gasoline. The mutual interdependence that resulted from their close ties in the other sectors enabled them to follow similar policies in marketing both with regards to the type of behaviour they employed against outsiders as well as among themselves.

Among themselves, the major gasoline marketers closely aligned their marketing strategies, practising mutual forebearance with respect to price competition. The nature of rivalry among these large vertically integrated firms generally took the form of non-price competition. To sell gasoline through an extensive branded dealer network, these firms depended upon heavy promotional campaigns and a substantial investment in facilities to develop and to maintain brand indentification. This system was costly and required high wholesale and retail margins. The majors' branded gasoline distribution system was inefficient because the high margins it required were not sustainable in the face of unhindered competition from lower cost marketers.

The high margins required to support the majors' marketing network invited entry. Entry from two different types of firms occurred. Integraged

regional marketers like British Petroleum and Petrofina entered during the mid-nineteen fifties. Although their retail prices were sometimes slightly lower than those of the majors, their entry did little to stimulate price competition. Entry also occurred from independent non-integrated marketers. Taking advantage of the 'excessive' margins being charged by the majors, they priced below the majors' branded prices. Their advantage lay primarily in their lower marketing costs and not in their paying distress wholesale prices for gasoline. Operating on lower wholesale and retail margins than the majors, a substantial proportion of the independents exploited the economies inherent in gasoline retailing. These stations were characterized by high average volume relative to the majors' stations.

From the late nineteen fifties, when independents first gained a foothold, to the early nineteen seventies, the majors recognized that their branded network and its price structure were vulnerable to entry from retailers and wholesalers whose wholesale/retail costs were lower than their own. These lower cost independent marketers were the prime source of price competition in the gasoline market in Canada. Nevertheless, the majors were able to restrict the development of price competition emanating from the independent sector and to perpetuate their high cost, branded networks.

The majors were first seriously threatened with the entry of independent marketers in the late nineteen fifties and early nineteen sixties. Where the latter did not have to rely solely on domestic refineries for product, or where the market, because of its size, offered greater ease of entry, the independents entered first — in urban centres such as Toronto, Montreal and Vancouver.

The majors reacted to entry, not with policies that were designed to make their own distribution system less costly, but with practices aimed at constraining or eliminating price competition coming from the independent sector. The majors were able to remove the threat of price competition by using various monopolistic practices to discipline the independent sector and to force their prices upwards so that they conformed to the majors' retail pricing structure. The instruments used for this purpose took a number of forms. In the late nineteen fifties and early nineteen sixties, the majors employed temporary allowances or consignment programmes to provide dealers with subsidies. Both tools were used to develop a systematic structure of price discrimination to discipline the independents. Prices were lowered at selected locations to counter these firms.

By the late nineteen sixties another method was adopted by the majors. In varying degrees, the majors developed strategically located chains of low-priced private brand stations. These were used as 'fighting brands' to protect the majors' branded network. Second brands were not introduced by the majors as an attempt to cater to the price conscious consumer on a long run basis. These 'fighting brands' were meant to be used as temporary tools to draw

business away from the independents. They were meant to raise independents' prices to levels acceptable to the majors. Both the profitability objective and the actual performance of these 'fighting brand' chains indicate that some majors were quite willing to incur losses in order to attain this objective.

In addition to using these monopolistic practices at the retail level, the major firms used their control of the refinery sector to reinforce the disciplinary retailing policies that they were directing against the independents. When conditions permitted, the majors forced up wholesale prices to the independents, thus increasing the costs of this sector.

The objectives, the characteristics and the effects of the various policies used against the independents demonstrates that they were disciplinary or predatory in nature. First, the situation in which the majors found themselves and their reaction to it points to predation. Throughout the period, the majors recognized that an equilibrium between the two sectors required price differentials that were less than the cost differentials between the unbrandeds and themselves. Thus, when branded prices were lowered to discipline this sector, the majors had, by necessity, to drop their prices below costs. As for second brands, both the profitability objective adopted and their actual performance — losses were incurred — indicate that these chains were predatory in nature.

It is not just the situation in which the majors found themselves and the profitability objective of the majors' second brands that indicate predation was practised. Evidence from company after company shows that, in the face of the acknowledged cost superiority possessed by the independent sector, the majors temporarily lowered their prices to discipline this sector. The temporary nature of their programmes implies that their intent was to raise prices. In addition, evidence from several firms shows that it was their intent to force the independents to raise prices. Predation was meant to suppress entry, eliminate competitors, or to reduce the growth of surviving independents.

Finally, the evidence provides an indication of the success of the predatory policies. Various companies indicated that entry by lower priced marketers was reduced below the level it would have been otherwise, some lower priced competitors were eliminated, and those independents who remained were reduced in scope. Throughout most of the period, independents were forced to price at a limited discount off the high prices established by the majors, and not in relation to their own cost levels. The result was that retail/wholesale margins of the majors, by the late nineteen sixties, were returned to levels that the majors characterized as 'fat', 'comfortable', 'inordinate', and 'excessive'. Thus, situation, intent, and effect all point to the same conclusion. The majors effectively employed monopolistic disciplinary practices to protect their high cost, high priced branded network.

The ability of the majors to perpetuate this type of marketing system attests to the strength of the monopolistic conditions that existed and the

monopolistic practices that were employed to protect the majors' position. Mutual forebearance in marketing with respect to price competition resulted, in part, from the arrangements at other levels of this integrated industry. But the survival of the marketing system was the result of more than just forebearance, because by itself the high cost marketing system and the resultng high prices attracted new entrants. It was the way in which the majors acted as a group to prevent entry or to discipline entrants who threatened to compete with regard to price that demonstrates conduct inimical to the public interest. The majors used their discretionary power to entrench their monopolistic position at this and other levels by employing predatory and disciplinary pricing policies against certain marketers whose low cost distribution system threatened the majors' branded pricing structure.

That the independents were contained can be attributed to the way in which the actions of the majors were mutually reinforcing, and the size of the majors as a group relative to the independent sector. The majors understood their common interest — the need to protect their high cost branded distribution network — and perceived a common threat of the more efficient independent marketers. The predatory and disciplinary policies that were adopted by each of these majors tended to parallel and to reinforce one another. These were not simply acts of omission usually referred to as 'conscious parallelism'. These policies were implemented by each firm following a careful evaluation of what the other majors were doing and with an appreciation that these policies were predatory or disciplinary in intent or effect. Each firm then adopted policies which best suited its own situation but which also contributed to the common objective of disciplining the independents. The knowledge that these firms used in developing their strategies was reinforced on occasion by confirming communications with one another.

As a result, analogous or parallel disciplinary policies were adopted that together served to restrain price competition from the independent marketing sector. The majors' disciplinary policies were therefore the result of a conscious attempt to coordinate their behaviour against price competitive outsiders. In this sense, the majors acted as a unit employing predatory policies to entrench the monopolistic position that they owed to their control upstream in refining and at the crude acquisition stage.

The operation of the majors as a unit was facilitated by the understanding each had as to the role it would play. Evidence of this mutuality is found both in general behavioural patterns and in specific activities of individual companies. In terms of general behaviour, it can be argued that much of what was done by individual companies was not sensible unless the company counted on others to support it with mutual reinforcing actions. Predation has externality problems in a small group situation. Any one firm in an oligopoly, initiating action by itself to drive out new marketers, may bear a disproportionate share of

the costs of the predatory action relative to the benefits that successful predation will generate for all members of the oligopoly. In this case, only when each member of the oligopoly joins in the action aimed at outsiders will the costs and benefits of the action be reasonably equally proportioned. Successful predation in this case is generally a group effort; it works when each member agrees to bear certain costs with the understanding that others will reciprocate. Otherwise, none could be certain that another would initiate predation when it was required for the good of the oligopoly; nor could any firm be certain that it would be carried out to a successful completion.

That the majors were able to operate as a group in this fashion is supported not only by the evidence that each firm contributed to a common goal but also by the roles that each adopted. In particular, each company understood the importance of its respective role. Imperial, the price leader on most occasions, and Shell, who led at times, understood that their actions could influence others and acted accordingly. Moreover, the leadership role was not something that unsuspectingly devolved upon these two firms. On occasion their policies were devised to communicate their intent to others; as such, it may be argued that a conscious attempt was made to gain the support of other majors who were 'followers'. In addition to such indirect communication, these firms also directly communicated with one another and other majors on occasion to ensure that misunderstandings of their predatory policies did not arise. These efforts would have had the effect of preventing a general outbreak of competition among the majors while disciplinary policies were being employed against independents.

While the leaders of the industry played the dominant role in creating a unit whose actions served to confine the independents, the 'followers' such as Gulf and Texaco actively participated in this process. Information was presented showing that Texaco, Gulf and the regional marketers all had the same appreciation of the threat offered by low priced independents. They also had the same objective to restrain this sector and implemented policies that were meant to discipline the independents. Moreover, they did not do so in a vacuum. Both Texaco and Gulf carefully evaluated the policies of the leaders, credited them with being predatory in intent, and then followed similar policies of their own. The example of Texaco following an Imperial price squeeze indicates the supportive nature of this company's actions. Other examples from this same company show how closely it followed the leaders. In many cases the instruments chosen by Texaco for specific situations were identical to those adopted by the leaders of the industry. Not only did Texaco support Imperial's price squeeze, but it also used allowances when other majors used allowances, consignment when others implemented consignment, and second brands when others did the same. In addition, a follower like Gulf was able to take the lead when circumstances permitted. It also proved capable of experimenting with

predatory policies by itself in an area such as Sault Ste. Marie. This counters the argument that the followers were bound to adopt the same predatory policies or become uncompetitive.

Thus the firms which fell into the follower category intended their policies to be supportive and recognized that supportive actions were necessary to the overall industry objective. As such, the follower's actions were conditional on those of the leaders. Therefore these firms formed part of the unit that acted so as to restrict the independent sector. Because each party understood the course of action being pursued by the other, each comprehended that success was dependent upon all adopting a similar though not necessarily identical policy, and each acted to reinforce a common strategy, competition in the marketing sector was restricted.

This study has not only adduced evidence on predation but it has also shown the similarity of the majors' monopolistic practices both over time and across companies in this area. In the late nineteen fifties, it was demonstrated that prices were deliberately reduced to discipline the independent sector. Statements of intent provide corroboration of objectives. Case studies of this period show that these policies were implemented and that the intended effect was accomplished. The majors admitted their margins were moved to levels that they characterized as 'excessive'. At the beginning of the nineteen sixties, similar policies were implemented. Led by Imperial, a differential pricing strategy was introduced via consignment programmes. This policy was designed to raise independents' prices. Other companies, like Texaco, followed recognizing that the intent of these policies was to discipline the independent and to increase prices in the independent sector to a level closer to the regular branded price. Companies like Gulf implemented these same strategies on a temporary basis even though they acknowledged the lower cost of the independents. They also were implicitly attempting to force prices upwards. Evidence from Shell shows that prices were dropped well below cost and that this was accompanied by communications with other majors that indicated to these companies that Shell's aggressive policy was aimed at 'clearing up' competition from the independents. The result was that independents were eliminated and prices were moved back to their high pre-price war level. At the end of the nineteen sixties, when the independents offered their next real threat, the majors adopted a variant of the policies used before but supplemented them with the addition of second brands.

Repetition of behaviour such as this provides persuasive evidence that the events reported herein were isolated neither in time nor space. They constituted a practice aimed generally at one particular segment — the independent marketers. It also refutes the commonly offered justification for the policies — that they were required to provide support for the majors' dealers who were faced with unfair competition. For the realization that the primary

advantage enjoyed by the independents lay in their lower operating costs and not in their lower product costs was not unique to one company nor was it held to be relevant for only one time period. From the late nineteen fifties to the early nineteen seventies, the majors recognized that their branded network and its price structure were vulnerable to entry from the independents and successfully employed monopolistic practices to discipline this sector.

Although for some purposes marketing can be treated as a distinct sector, neither its performance nor the trade practices found therein can be properly understood except in the context of the degree of vertical integration that characterized this industry. If the structural characteristics of the marketing sector alone were the sole determinants of market performance, this sector might have been expected to perform relatively well. The technical characteristics of this sector appear to make entry to the industry relatively easy. Barriers to entry from 'natural' sources have normally been described as being lower in this sector than in the others. Therefore high marketing margins should not have been sustainable for long periods of time.

Exactly the opposite was true in Canada. Throughout much of the post-war period, retail and wholesale margins were kept at levels that the industry recongized as being 'excessive'. This was the result of two separate factors — both of which owed their success to the relationships that developed among the majors at other levels of this vertically integrated industry. The majors' tendency not to engage in price competition one with another and their parallel use of predatory restrictive practices against the independents depended upon the ties that had developed both at the refining and production levels of this industry.

The adoption of parallel behaviour in the marketing sector depended upon the creation of a community of interest among the majors, the development of a clear perception by each major of its relative role, the development of an effective instrument to discipline 'maverick' firms, and finally the coordination of actual behaviour in the marketing sector. A community of interest was created by the accommodations reached by these same firms at the production and refining levels. Given these accommodations the cost of deviant behaviour in the marketing sector would potentially have been the abrogation of the arrangements made elsewhere and the dissipation of the benefits derived therefrom. These arrangements at other levels also served to enchance the power of the leading firm. Therefore they aided in defining the division between leaders and followers and contributed to the establishment of relative roles. They also provided an effective tool to discipline 'maverick' firms. The pricing mechanism that was established in the production sector meant that a refiner which did not abide by the rules could suddenly find his crude price increased relative to his competitors; for pipeline control and the pricing structure allowed less desirable, higher cost crudes to be directed wherever the industry leaders

desired. All of this made coordination in the marketing sector possible without extensive inter-firm communications. The communications that did take place in the marketing sector were primarily aimed at preventing misunderstandings and were, therefore, only one of the causes of the successful harmonization by the majors of their disciplinary policies. The contracts and arrangements made in the refining sector were equally important in coordinating behaviour that affected the marketing sector.

Even so, it should be noted that, the causal relationship between the performance of the marketing sector and that of the other sectors flowed in both directions. The arrangements that forged the majors together into a unit in the marketing sector also contributed to the stability of the mechanisms that were used to coordinate behaviour in other sectors. Vertical integration by the same firms operating in different levels of the industry therefore served to reinforce the coordination that developed at each level.

In conclusion, it was the conjunction of all these factors that facilitated the coordination of the majors policies in the marketing sector to the detriment of the competitive process. The performance of the marketing sector was detrimentally affected by both the mutual forebearance among the majors that restricted competition in this industry and by the predatory practices that were used to entrench the monopolistic position of the majors. Both aspects of behaviour show that the majors were able to act as a unit. That for most of the post-war period they were able to avoid adopting the efficient low priced distribution system that the independents demonstrated was acceptable to the public is proof of the extent of their control and the efficacy of the predatory practices that were aimed at the independents.

APPENDICES

APPENDIX A

The Use of Retail Price Support by the Majors

I. The Use of Consignment and Allowances by Shell, Gulf and Texaco 1969-75.

II. The Use of Gasoline Price Support Programmes by Imperial Oil 1972-77.

THE USE OF RETAIL PRICE SUPPORT BY THE MAJORS

I. The Use Of Consignment And Allowances By Shell, Gulf And Texaco 1969 — 75

The Marketing Volume has shown how the majors used subsidy policies to contain competition from the independent sector. The Tables in this Appendix show the distribution of and the intensity to which three majors — Shell, Gulf and Texaco — used consignment and allowance subsidies to support their dealer networks over the period 1969 to 1975. The information contained in these Tables is based upon data submitted by these three firms pursuant to an order for a return of information under section 9 of the Combines Investigation Act.

This Appendix contains separate tables on the use of consignment and allowances by Shell, Gulf and Texaco on a regional basis (Atlantic, Quebec, Ontario, Prairies and British Columbia) and by major metropolitan centre (Halifax, Moncton, Montreal, Ottawa, Toronto, Winnipeg, Regina, Calgary, Edmonton and Vancouver). The Tables for each of the five regions and the metropolitan centres noted contain the following information on a yearly basis:

(1) The number of outlets on consignment or allowance.

(2) The percentage of outlets on consignment or allowance.

(3) The volume of gasoline sold under alowances or consignment in thousands of gallons.

(4) The percentage of total gasoline sales made under consignment or allowance.

(5) The average length of time outlets were on consignment or allowance in days.

(6) The total amount of the subsidy payment consignment or allowance) in thousands of dollars.

(7) The subsidy payment (consignment or allowance) in cents (or dollars) per gallon.

Note: In some instances for certain markets the percentage of outlets on allowance and consignment total over one hundred percent. One explanation for this may be that stations which were on one programme for part of a year and on some other programme for another part of the year were counted twice in the percentages [(a) denotes such occurrences].

TABLE 1

SHELL'S USE OF ALLOWANCES BY REGION 1969-1975[1]

YEAR	*1969*	*1970*	*1971*	*1972*	*1973*	*1974*	*1975*
REGION							
ATLANTIC							
(1) Number of outlets on allowance	–	–	–	8	11	6	13
(2) % of outlets on allowance	–	–	–	2	3	2	4
(3) Volume on allowance	–	–	–	359	1,100	796	1,899
(4) % Volume on allowance	–	–	–	1	2	1	3
(5) Average length of time on allowance	–	–	–	85	201	175	188
(6) Total Subsidy payment	–	–	–	9	31	13	42
(7) Subsidy payment in $ per gallon	–	–	–	.03	.03	.02	.02
QUEBEC							
(1) Number of outlets on allowance	36	598	818	796	667	2	388
(2) % of outlets on allowance	4	60	(a)86	(a)87	(a)77	0	50
(3) Volume of allowance	2,579	43,317	123,100	114,980	43,496	110	37,523
(4) % Volume on allowance	2	25	64	55	19	0	16
(5) Average length of time on allowance	149	122	338	336	171	132	155
(6) Total Subsidy payment	52	975	3,612	3,657	1,439	1	1,128
(7) Subsidy payment in $ per gallon	.02	.02	.03	.03	.03	.01	.03
ONTARIO							
(1) Number of outlets on allowance	773	381	514	712	956	643	846
(2) % of outlets on allowance	39	19	27	40	56	40	58
(3) Volume on allowance	69,516	42,122	46,538	55,001	81,196	66,450	147,104
(4) % Volume on allowance	24	13	22	26	34	28	59
(5) Average length of time on allowance	169	245	226	179	214	151	279
(6) Total Subsidy payment	760	996	1,145	1,903	2,385	1,511	4,239
(7) Subsidy payment in $ per gallon	.01	.02	.02	.03	.03	.02	.03

TABLE 1 (conc.)

SHELL'S USE OF ALLOWANCES BY REGION 1969-1975[1]

YEAR	*1969*	*1970*	*1971*	*1972*	*1973*	*1974*	*1975*
REGION							
PRAIRIES							
(1) Number of outlets on allowance	95	8	4	19	34	76	161
(2) % of outlets on allowance	8	1	0	2	5	12	27
(3) Volume on allowance	3,482	300	95	500	3,613	8,697	22,186
(4) % Volume on allowance	3	0	0	1	4	23	20
(5) Average length of time on allowance	78	363	278	36	191	158	252
(6) Total Subsidy payment	27	5	2	9	86	147	409
(7) Subsidy payment in $ per gallon	.01	.02	.02	.02	.02	.02	.02
BRITISH COLUMBIA							
(1) Number of outlets on allowance	–	–	–	–	–	8	114
(2) % of outlets on allowance	–	–	–	–	–	2	30
(3) Volume on allowance	–	–	–	–	–	749	9,439
(4) % Volume on allowance	–	–	–	–	–	1	17
(5) Average length of time on allowance	–	–	–	–	–	93	242
(6) Total Subsidy payment	–	–	–	–	–	16	274
(7) Subsidy payment in $ per gallon	–	–	–	–	–	.02	.03

(a) See Introductory Note

1. For the Atlantic region, from 1969-1971, and for British Columbia, from 1969-1973, Shell indicated that Allowances were not used.

TABLE 2

SHELL'S USE OF CONSIGNMENT BY REGION 1969-1975

YEAR	*1969*	*1970*	*1971*	*1972*	*1973*	*1974*	*1975*
ATLANTIC							
(1) Number of outlets on consignment	41	43	41	38	38	41	39
(2) % of outlets on consignment			10	8	9	11	11
(3) Volume on consignment	4,622	3,589	4,471	3,969	3,104	5,244	4,234
(4) % Volume on consignment			10	8	6	9	7
(5) Average length of time on consignment	226	268	220	253	97	167	361
(6) Total Subsidy payment	428	531	396	373	352	601	476
(7) Subsidy payment in $ per gallon	.09	.15	.09	.09	.11	.11	.11
REGION							
QUEBEC							
(1) Number of outlets on consignment	933	886	221	161	353	193	243
(2) % of outlets on consignment			(a)23	(a)18	(a)38	23	31
(3) Volume on consignment	138,858	118,377	28,078	27,773	34,854	30,177	27,855
(4) % Volume on consignment			17	17	20	15	13
(5) Average length of time on consignment	354	295	194	199	120	149	128
(6) Total Subsidy payment	11,077	9,675	2,596	2,501	3,520	3,114	2,705
(7) Subsidy payment in $ per gallon	.08	.08	.09	.09	.10	.10	.10
ONTARIO							
(1) Number of outlets on consignment	295	152	131	122	166	150	123
(2) % of outlets on consignment			7	7	10	9	8
(3) Volume on consignment	31,694	25,696	21,353	14,048	15,413	20,711	19,603
(4) % Volume on consignment			7	5	5	6	5
(5) Average length of time on consignment	230	242	200	133	112	136	157
(6) Total Subsidy payment	2,632	2,382	2,129	1,343	1,509	1,767	1,641
(7) Subsidy payment in $ per gallon	.08	.09	.10	.10	.10	.09	.08

TABLE 2 (conc.)

SHELL'S USE OF CONSIGNMENT BY REGION 1969-1975

YEAR	*1969*	*1970*	*1971*	*1972*	*1973*	*1974*	*1975*
PRAIRIES							
(1) Number of outlets on consignment	12	7	7	15	29	53	50
(2) % of outlets on consignment			1	1	4	8	8
(3) Volume on consignment	1,831	850	1,316	2,086	5,672	21,852	3,797
(4) % Volume on consignment			1	2	5	17	3
(5) Average length of time on consignment	232	171	171	77	167	222	129
(6) Total Subsidy payment	129	77	130	214	461	1,125	186
(7) Subsidy payment in $ per gallon	.07	.09	.10	.10	.08	.09	.05
BRITISH COLUMBIA							
(1) Number of outlets on consignment	9	12	22	20	19	25	20
(2) % of outlets on consignment			5	5	5	6	5
(3) Volume on consignment	1,306	2,270	2,756	2,946	4,727	3,758	2,381
(4) % Volume on consignment			4	4	6	4	3
(5) Average length of time on consignment	220	224	143	156	215	120	35
(6) Total Subsidy payment	108	213	245	291	532	318	202
(7) Subsidy payment in $ per gallon	.08	.09	.09	.10	.11	.08	.08

(a) See Introductory Note.

TABLE 3

SHELL'S USE OF ALLOWANCES IN SELECTED METROPOLITAN CENTRES 1969-1975[1]

YEAR	*1969*	*1970*	*1971*	*1972*	*1973*	*1974*	*1975*
CITIES							
MONCTON							
(1) Number of outlets on allowance				5	5	3	3
(2) % of outlets on allowance				42	42	23	23
(3) Volume on allowance				288	761	586	870
(4) % Volume on allowance				12	30	22	29
(5) Average length of time on allowance				86	197	146	272
(6) Total Subsidy payment				7	19	10	21
(7) Subsidy payment in $ per gallon				.024	.025	.017	.024
MONTREAL							
(1) Number of outlets on allowance		188	257	236	182		126
(2) % of outlets on allowance		(a)60	(a)82	(a)79	(a)64		46
(3) Volume on allowance		25,962	56,157	48,142	14,056		11,307
(4) % Volume on allowance		31	71	60	17		11
(5) Average length of time on allowance		162	328	316	130		112
(6) Total Subsidy payment		437	1,281	1,211			260
(7) Subsidy payment in $ per gallon		.017	.023	.025			.023
OTTAWA							
(1) Number of outlets on allowance	50	56	53	51	39		33
(2) % of outlets on allowance	(a)72	(a)81	(a)77	77	62		54
(3) Volume on allowance	6,991	11,659	10,817	10,238	4,896		5,112
(4) % Volume on allowance	45	65	62	57	24		21
(5) Average length of time on allowance	202	284	299	312	184		184
(6) Total Subsidy payment	70	136	123	317	190		99
(7) Subsidy payment in $ per gallon	.010	.012	.011	.031	.039		.019

TABLE 3 (cont.)

SHELL'S USE OF ALLOWANCES IN SELECTED METROPOLITAN CENTRES 1969-1975[1]

YEAR	*1969*	*1970*	*1971*	*1972*	*1973*	*1974*	*1975*
TORONTO							
(1) Number of outlets on allowance	273	38	35	45	114	105	153
(2) % of outlets on allowance	83	12	11	15	39	37	61
(3) Volume on allowance	37,482	7,228	5,707	4,524	11,589	15,248	37,020
(4) % Volume on allowance	39	7	6	4	11	13	32
(5) Average length of time on allowance	116	176	174	101	137	136	248
(6) Total Subsidy payment	422	227	211	190	358	317	876
(7) Subsidy payment in $ per gallon	.011	.031	.037	.042	.031	.021	.024
WINNIPEG							
(1) Number of outlets on allowance	85					47	52
(2) % of outlets on allowance	79					58	68
(3) Volume on allowance	3,124					6,538	15,006
(4) % Volume on allowance	13					24	48
(5) Average length of time on allowance	60					148	327
(6) Total Subsidy payment	21					129	322
(7) Subsidy payment in $ per gallon	.007					.020	.021
REGINA							
(1) Number of outlets on allowance				19	19		15
(2) % of outlets on allowance				86	83		79
(3) Volume on allowance				450	2,389		2,678
(4) % Volume on allowance				9	41		34
(5) Average length of time on allowance				36	182		235
(6) Total Subsidy payment				9	38		33
(7) Subsidy payment in $ per gallon				.02	.016		.012

TABLE 3 (conc.)

SHELL'S USE OF ALLOWANCES IN SELECTED METROPOLITAN CENTRES 1969-1975[1]

YEAR	*1969*	*1970*	*1971*	*1972*	*1973*	*1974*	*1975*
VANCOUVER							
(1) Number of outlets on allowance						7	49
(2) % of outlets on allowance						6	45
(3) Volume on allowance						747	5,524
(4) % Volume on allowance						2	15
(5) Average length of time on allowance						106	162
(6) Total Subsidy payment						18	154
(7) Subsidy payment in $ per gallon						.024	.028

(a) See Introductory Note

1. For Halifax, Calgary and Edmonton, Shell indicated that there was no data available, or that allowances were not used. The same explanation applies to other cities where no data is listed.

TABLE 4

SHELL'S USE OF CONSIGNMENT IN SELECTED METROPOLITAN CENTRES 1969-1975[1]

YEAR	*1969*	*1970*	*1971*	*1972*	*1973*	*1974*	*1975*
HALIFAX							
(1) Number of outlets on consignment	11	14	12	12	11	14	12
(2) % of outlets on consignment	41	47	40	40	37	45	40
(3) Volume on consignment	1,721	1,768	1,596	1,611	1,345	2,587	2,218
(4) % Volume on consignment	34	28	24	22	17	30	25
(5) Average length of time on consignment	218	233	235	222	236	214	218
(6) Total Subsidy payment	146	154	136	149	152	299	247
(7) Subsidy payment in $ per gallon	.085	.087	.085	.092	.113	.116	.111
MONCTON							
(1) Number of outlets on consignment	5	6	6	4	3	1	2
(2) % of outlets on consignment	45	60	50	33	25	8	15
(3) Volume on consignment	361	784	536	323	62	11	17
(4) % Volume on consignment	16	34	24	14	2	0	1
(5) Average length of time on consignment	146	246	187	147	25	34	5
(6) Total Subsidy payment	36	75	51	32	6	1	2
(7) Subsidy payment in $ per gallon	.100	.096	.095	.099	.097	.091	.118
MONTREAL							
(1) Number of outlets on consignment	300	305	97	97	200	74	95
(2) % of outlets on consignment	99	(a)97	(a)31	(a)33	(a)70	26	35
(3) Volume on consignment	71,019	54,405	15,323	16,458	22,129	13,304	11,339
(4) % Volume on consignment	97	64	19	20	26	13	11
(5) Average length of time on consignment	353	253	204	191	134	155	124
(6) Total Subsidy payment	5,836	4,608	1,416	1,400	2,097	1,341	1,103
(7) Subsidy payment in $ per gallon	.082	.085	.092	.085	.095	.101	.097

TABLE 4 (cont.)

SHELL'S USE OF CONSIGNMENT IN SELECTED METROPOLITAN CENTRES 1969-1975[1]

YEAR	*1969*	*1970*	*1971*	*1972*	*1973*	*1974*	*1975*
OTTAWA							
(1) Number of outlets on consignment	24	23	19	15	14	15	11
(2) % of outlets on consignment	(a)35	(a)33	(a)28	23	22	25	18
(3) Volume on consignment	2,997	3,387	3,084	2,048	2,119	1,952	2,609
(4) % Volume on consignment	19	19	18	11	11	8	11
(5) Average length of time on consignment	222	210	247	202	249	127	257
(6) Total Subsidy payment	249	291	282	172	213	194	257
(7) Subsidy payment in $ per gallon	.083	.086	.091	.084	.101	.099	.099
TORONTO							
(1) Number of outlets on consignment	46	26	35	41	33	16	12
(2) % of outlets on consignment	14	8	11	14	11	6	5
(3) Volume on consignment	5,812	7,355	6,501	3,593	2,120	2,380	3,755
(4) % Volume on consignment	6	7	7	3	2	2	3
(5) Average length of time on consignment	113	263	161	71	63	107	201
(6) Total Subsidy payment	381	618	632	344	220	267	363
(7) Subsidy payment in $ per gallon	.066	.084	.097	.096	.104	.113	.097
WINNIPEG							
(1) Number of outlets on consignment	7	6	5	9	16	19	17
(2) % of outlets on consignment	7	7	6	10	20	23	22
(3) Volume on consignment	1,452	831	1,078	1,426	4,194	9,011	1,049
(4) % Volume on consignment	6	3	4	1	4	8	1
(5) Average length of time on consignment	230	127	166	109	206	255	35
(6) Total Subsidy payment	97	76	104	134	342	515	48
(7) Subsidy payment in $ per gallon	.067	.091	.096	.094	.082	.057	.046

TABLE 4 (cont.)

SHELL'S USE OF CONSIGNMENT IN SELECTED METROPOLITAN CENTRES 1969-1975[1]

YEAR	*1969*	*1970*	*1971*	*1972*	*1973*	*1974*	*1975*
REGINA							
(1) Number of outlets on consignment	1			2	1	4	4
(2) % of outlets on consignment	4			9	4	21	21
(3) Volume on consignment	134			64	270	2,035	184
(4) % Volume on consignment	3			1	5	30	2
(5) Average length of time on consignment	204			75	339	227	33
(6) Total Subsidy payment	12			7	24	83	9
(7) Subsidy payment in $ per gallon	.090			.109	.089	.041	.049
CALGARY							
(1) Number of outlets on consignment				1	6	10	9
(2) % of outlets on consignment				1	9	16	16
(3) Volume on consignment				29	982	4,736	1,157
(4) % Volume on consignment				0	6	24	6
(5) Average length of time on consignment				15	159	268	60
(6) Total Subsidy payment				2	75	239	54
(7) Subsidy payment in $ per gallon				.069	.076	.05	.047
EDMONTON							
(1) Number of outlets on consignment				3	8	9	
(2) % of outlets on consignment				5	14	17	
(3) Volume on consignment				147	3,362	662	
(4) % Volume on consignment				1	26	4	
(5) Average length of time on consignment				37	183	37	
(6) Total Subsidy payment				12	151	29	
(7) Subsidy payment in $ per gallon				.082	.045	.044	

TABLE 4 (conc.)

SHELL'S USE OF CONSIGNMENT IN SELECTED METROPOLITAN CENTRES 1969-1975[1]

YEAR	*1969*	*1970*	*1971*	*1972*	*1973*	*1974*	*1975*
VANCOUVER							
(1) Number of outlets on consignment	6	9	16	15	13	17	6
(2) % of outlets on consignment	4	7	12	12	10	15	6
(3) Volume on consignment	962	1,867	2,346	2,292	4,015	2,643	1,587
(4) % Volume on consignment	4	6	8	7	12	7	4
(5) Average length of time on consignment	231	207	143	132	238	92	167
(6) Total Subsidy payment	77	159	199	226	440	199	130
(7) Subsidy payment in $ per gallon	.08	.085	.085	.099	.110	.075	.082

(a) See Introductory Note

1. For Regina, Calgary and Edmonton, for those years in which no data is recorded, Shell indicated that consignment was not used or that no data was available.

TABLE 5

GULF'S USE OF ALLOWANCES BY REGION 1971-1975[1]

YEAR	*1971*	*1972*	*1973*	*1974*	*1975*
ATLANTIC					
(1) Number of outlets on allowance			3		
(2) % of outlets on allowance			1		
(3) Volume on allowance			150		
(4) % Volume on allowance			0		
(5) Average length of time on allowance			94		
(6) Total Subsidy payment			3		
(7) Subsidy payment in $ per gallon			.02		
QUEBEC					
(1) Number of outlets on allowance	58	67	235	219	3
(2) % of outlets on allowance	6	7	(a)26	24	0
(3) Volume on allowance	5,149	7,670	20,803	9,139	19
(4) % Volume on allowance	5	7	17	7	0
(5) Average length of time on allowance	271	309	240	81	18
(6) Total Subsidy payment	79	182	569	112	.248
(7) Subsidy payment in $ per gallon	.015	.024	.027	.012	.013
PRAIRIES					
(1) Number of outlets on allowance			3	16	21
(2) % of outlets on allowance			0	1	1
(3) Volume on allowance			135	842	2,571
(4) % Volume on allowance			0	0	1
(5) Average length of time on allowance			25	54	106
(6) Total Subsidy payment			.097	9	52
(7) Subsidy payment in $ per gallon			.007	.011	.02

TABLE 5 (conc.)

GULF'S USE OF ALLOWANCES BY REGION 1971-1975[1]

YEAR	*1971*	*1972*	*1973*	*1974*	*1975*
REGION					
BRITISH COLUMBIA					
(1) Number of outlets on allowance				5	125
(2) % of outlets on allowance				1	23
(3) Volume on allowance				35	24,839
(4) % Volume on allowance				0	29
(5) Average length of time on allowance				35	219
(6) Total Subsidy payment				.093	585
(7) Subsidy payment in $ per gallon				.02	.023

(a) See Introductory Note

1. Gulf did not provide data for Ontario.

2. Item (5) — Average length of time on allowance, was arrived at by calculating an index and multiplying it by 365. This index is: Volume sold on allowance over total volume sold by those stations that were on allowance at some time during the year.

TABLE 6

GULF'S USE OF CONSIGNMENT BY REGION 1971-1975[1]

YEAR	*1971*	*1972*	*1973*	*1974*	*1975*
REGION					
ATLANTIC					
(1) Number of outlets on consignment		9	2	6	18
(2) % of outlets on consignment		2	1	2	5
(3) Volume on consignment		128	35	265	2,487
(4) % Volume on consignment		0	0	0	4
(5) Average length of time on consignment		40	117	110	231
(6) Total Subsidy payment		10	3	22	201
(7) Subsidy payment in $ per gallon		.081	.086	.083	.081
QUEBEC					
(1) Number of outlets on consignment	804	812	765	439	459
(2) % of outlets on consignment	84	87	(a)85	49	53
(3) Volume on consignment	85,061	81,651	56,864	39,125	67,713
(4) % Volume on consignment	82	79	47	28	47
(5) Average length of time on consignment	356	354	224	210	315
(6) Total Subsidy payment	6,975	6,614	4,606	3,208	5,485
(7) Subsidy payment in $ per gallon	.081	.081	.081	.082	.081
ONTARIO					
(1) Number of outlets on consignment	332	567	676	530	568
(2) % of outlets on consignment	26	44	53	43	49
(3) Volume on consignment	33,050	48,459	87,828	86,990	127,588
(4) % Volume on consignment	17	24	38	34	51
(5) Average length of time on consignment	174	205	239	239	319
(6) Total Subsidy payment	2,314	3,392	5,797	6,611	9,760
(7) Subsidy payment in $ per gallon	.07	.07	.07	.08	.08

TABLE 6 (conc.)

GULF'S USE OF CONSIGNMENT BY REGION 1971-1975[1]

YEAR	*1971*	*1972*	*1973*	*1974*	*1975*
REGION					
PRAIRIES					
(1) Number of outlets on consignment	13	28	58	61	83
(2) % of outlets on consignment	1	2	3	4	5
(3) Volume on consignment	1,359	1,483	6,523	14,922	20,150
(4) % Volume on consignment	1	1	4	8	11
(5) Average length of time on consignment	255	119	174	270	285
(6) Total Subsidy payment	122	132	606	1,371	1,826
(7) Subsidy payment in $ per gallon	.09	.09	.09	.09	.09

1. Gulf did not provide data for British Columbia.

2. Item (5) — Average length of time on consignment — was arrived at by calculating an index and multiplying by 365. This index is: Volume sold on consignment over total volume sold by those stations that did use consignment at some time during the year.

TABLE 7

GULF'S USE OF ALLOWANCES IN SELECTED METROPOLITAN CENTRES 1971-1975[1]

YEAR	*1971*	*1972*	*1973*	*1974*	*1975*
REGION					
HALIFAX					
(1) Number of outlets on allowance					1
(2) % of outlets on allowance					5
(3) Volume on allowance					48
(4) % Volume on allowance					1
(5) Average length of time on allowance					52
(6) Total Subsidy payment					.242
(7) Subsidy payment in $ per gallon					.005
MONCTON					
(1) Number of outlets on allowance			3	1	
(2) % of outlets on allowance			38	13	
(3) Volume on allowance			150	34	
(4) % Volume on allowance			7	1	
(5) Average length of time on allowance			94	77	
(6) Total Subsidy payment			3	.573	
(7) Subsidy payment in $ per gallon			.02	.017	
MONTREAL					
(1) Number of outlets on allowance	8	13	39	76	
(2) % of outlets on allowance	3	6	(a)18	35	
(3) Volume on allowance	2,473	3,705	3,526	3,640	
(4) % Volume on allowance	5	8	7	6	
(5) Average length of time on allowance	250	195	198	74	
(6) Total Subsidy payment	53	105	84	54	
(7) Subsidy payment in $ per gallon	.021	.028	.024	.015	

TABLE 7 (conc.)

GULF'S USE OF ALLOWANCES IN SELECTED METROPOLITAN CENTRES 1971-1975[1]

YEAR	*1971*	*1972*	*1973*	*1974*	*1975*
REGINA					
(1) Number of outlets on allowance			2	5	9
(2) % of outlets on allowance			8	21	45
(3) Volume on allowance			135	731	2,001
(4) % Volume on allowance			4	11	25
(5) Average length of time on allowance			47	114	205
(6) Total Subsidy payment			.942	6.7	42
(7) Subsidy payment in $ per gallon			.007	.009	.021
CALGARY					
(1) Number of outlets on allowance					1
(2) % of outlets on allowance					2
(3) Volume on allowance					28
(4) % Volume on allowance					0
(5) Average length of time on allowance					28
(6) Total Subsidy payment					.532
(7) Subsidy payment in $ per gallon					.019
VANCOUVER					
(1) Number of outlets on allowance				6	42
(2) % of outlets on allowance				8	61
(3) Volume on allowance				1,399	9,309
(4) % Volume on allowance				7	50
(5) Average length of time on allowance				160	224
(6) Total Subsidy payment				9.3	180
(7) Subsidy payment in $ per gallon				.007	.019

(a) See Introductory Note.

1. Gulf did not provide data for Ottawa, Toronto, Winnipeg and Edmonton.

2. Item (5) — Average length of time on allowance — was arrived at by calculating an index and multiplying by 365. This index is: Volume sold on allowance over total volume sold by those stations that were on allowance at some time during the year.

TABLE 8

GULF'S USE OF CONSIGNMENT IN SELECTED METROPOLITAN CENTRES 1971-1975[1]

YEAR	*1971*	*1972*	*1973*	*1974*	*1975*
CITIES					
MONCTON					
(1) Number of outlets on consignment		7	1	3	7
(2) % of outlets on consignment		64	13	38	78
(3) Volume on consignment		114	38	263	850
(4) % Volume on consignment		7	2	8	28
(5) Average length of time on consignment		40	123	262	327
(6) Total Subsidy payment		9	3	22	69
(7) Subsidy payment in $ per gallon		.081	.082	.082	.081
MONTREAL					
(1) Number of outlets on consignment	206	204	185	112	136
(2) % of outlets on consignment	85	89	(a)85	52	63
(3) Volume on consignment	34,883	32,807	20,418	10,963	26,100
(4) % Volume on consignment	77	74	39	18	40
(5) Average length of time on consignment	355	356	218	169	311
(6) Total Subsidy payment	2,860	2,657	1,654	899	2,114
(7) Subsidy payment in $ per gallon	.082	.081	.081	.082	.081
OTTAWA					
(1) Number of outlets on consignment	24	26	25	20	20
(2) % of outlets on consignment	92	70	71	59	57
(3) Volume on consignment	4,927	5,077	4,377		4,906
(4) % Volume on consignment	71	72	55		49
(5) Average length of time on consignment	361	361	289		356
(6) Total Subsidy payment	434	409	360		402
(7) Subsidy payment in $ per gallon	.088	.081	.082		.082

TABLE 8 (conc.)

GULF'S USE OF CONSIGNMENT IN SELECTED METROPOLITAN CENTRES 1971-1975[1]

YEAR	*1971*	*1972*	*1973*	*1974*	*1975*
CITIES					
CALGARY					
(1) Number of outlets on consignment			2	5	11
(2) % of outlets on consignment			3	7	17
(3) Volume on consignment			539	1,623	2,937
(4) % Volume on consignment			3	7	14
(5) Average length of time on consignment			304	225	219
(6) Total Subsidy payment			50	146	273
(7) Subsidy payment in $ per gallon			.093	.090	.093
EDMONTON					
(1) Number of outlets on consignment			1	2	11
(2) % of outlets on consignment			2	3	20
(3) Volume on consignment			235	547	1,124
(4) % Volume on consignment			1	3	6
(5) Average length of time on consignment			259	234	123
(6) Total Subsidy payment			22	49	104
(7) Subsidy payment in $ per gallon			.094	.090	.093

(see note page 415)

TABLE 8 (conc.)

GULF'S USE OF CONSIGNMENT IN SELECTED METROPOLITAN CENTRES 1971-1975[1]

YEAR	*1971*	*1972*	*1973*	*1974*	*1975*
CITIES					
TORONTO					
(1) Number of outlets on consignment	28	52	90	112	133
(2) % of outlets on consignment	12	22	39	50	63
(3) Volume on consignment	6,042	6,821	20,822	23,471	40,931
(4) % Volume on consignment	8	9	26	27	47
(5) Average length of time on consignment	273	190	249	220	307
(6) Total Subsidy payment	423	477	1,381	1,807	3,221
(7) Subsidy payment in $ per gallon	.070	.070	.066	.077	.079
WINNIPEG					
(1) Number of outlets on consignment			16	29	30
(2) % of outlets on consignment			23	39	44
(3) Volume on consignment			2,009	7,035	9,392
(4) % Volume on consignment			9	31	46
(5) Average length of time on consignment			160	249	355
(6) Total Subsidy payment			185	647	836
(7) Subsidy payment in $ per gallon			.092	.092	.089
REGINA					
(1) Number of outlets on consignment		16	17	2	3
(2) % of outlets on consignment		53	68	8	15
(3) Volume on consignment		351	1,739	104	3,546
(4) % Volume on consignment		6	27	2	45
(5) Average length of time on consignment		52	145	37	333
(6) Total Subsidy payment		33	163	10	89
(7) Subsidy payment in $ per gallon		.094	.094	.096	.025

(a) See Introductory Note

1. Item (5)—Average length of time on consignment was arrived at by calculating an index and multiplying it by 365. This index is: Volume sold on consignment over total volume sold by those stations that did use consignment at some time during the year.

TABLE 9

TEXACO'S USE OF ALLOWANCES BY REGION 1971-1975[1]

YEAR	*1971*	*1972*	*1973*	*1974*	*1975*
REGION					
ATLANTIC					
(1) Number of outlets on allowance		23	13	35	38
(2) % of outlets on allowance		4	2	6	7
(3) Volume on allowance		641	263	326	1,932
(4) % Volume on allowance		1	0	1	3
(5) Average length of time on allowance		240	150	90	360
(6) Total Subsidy payment		17	9	7	25
(7) Subsidy payment in $ per gallon		.026	.034	.021	.013
QUEBEC					
(1) Number of outlets on allowance	49	1,279*	27	500	574
(2) % of outlets on allowance	4		2	40	48
(3) Volume of allowance	636	176,288	85	89,769	171,666
(4) % Volume on allowance	0	85	0	40	71
(5) Average length of time on allowance	365	347	137	182	335
(6) Total Subsidy payment	19	282	1	191	3,396
(7) Subsidy payment in $ per gallon	.03	.002	.012	.002	.02
ONTARIO					
(1) Number of outlets on allowance	286	727	10	849	992
(2) % of outlets on allowance	17	43	1	54	63
(3) Volume on allowance	4,375	11,388	276	11,391	25,019
(4) % Volume on allowance	2	5	0	5	10
(5) Average length of time on allowance	213	243	274	152	342
(6) Total Subsidy payment	103	456	12	297	718
(7) Subsidy payment in $ per gallon	.024	.040	.043	.026	.029

TABLE 9 (conc.)

TEXACO'S USE OF ALLOWANCES BY REGION 1971-1975[1]

YEAR	*1971*	*1972*	*1973*	*1974*	*1975*
REGION					
PRAIRIES					
(1) Number of outlets on allowance		50		105	130
(2) % of outlets on allowance		6		7	17
(3) Volume on allowance		590		2,453	4,154
(4) % Volume on allowance		2		6	9
(5) Average length of time on allowance		90		220	275
(6) Total Subsidy payment		34		68	80
(7) Subsidy payment in $ per gallon		.058		.028	.019
BRITISH COLUMBIA					
(1) Number of outlets on allowance					99
(2) % of outlets on allowance					24
(3) Volume of allowance					1,837
(4) % Volume on allowance					3
(5) Average length of time on allowance					183
(6) Total Subsidy payment					38
(7) Subsidy payment in $ per gallon					.021

*This amount is greater than the total number of branded retail outlets for the Province of Quebec as a whole for 1972 which is 1238. This may be explained by a sampling error or an error in accounting.

1. The data supplied by Texaco was extrapolated from a 10% sample of their stations in each region.

TABLE 10

TEXACO'S USE OF CONSIGNMENT BY REGION 1971-1975[1]

YEAR	*1971*	*1972*	*1973*	*1974*	*1975*
REGION					
ATLANTIC					
(1) Number of outlets on consignment			16	30	41
(2) % of outlets on consignment			3	5	7
(3) Volume on consignment			227	729	1,317
(4) % Volume on consignment			0	1	2
(5) Average length of time on consignment			150	240	240
(6) Total Subsidy payment			19	68	110
(7) Subsidy payment in $ per gallon			.084	.093	.084
QUEBEC					
(1) Number of outlets on consignment	1,246	1,186	1,213	18	101
(2) % of outlets on consignment	94	96	95	1	8
(3) Volume on consignment	15,271	333	13,382	816	34,721
(4) % Volume on consignment	8	0	6	0	14
(5) Average length of time on consignment	360	15	274	213	225
(6) Total Subsidy payment	1,257	27	1,164	67	304
(7) Subsidy payment in $ per gallon	.082	.081	.087	.082	.009
ONTARIO					
(1) Number of outlets on consignment	215	28	961	68	40
(2) % of outlets on consignment	13	2	62	4	3
(3) Volume on consignment	4,085	530	16,938	2,074	3,587
(4) % Volume on consignment	2	0	7	1	1
(5) Average length of time on consignment	213	90	213	122	192
(6) Total Subsidy payment	283	36	1,284	165	295
(7) Subsidy payment in $ per gallon	.069	.068	.076	.08	.082

TABLE 10 (conc.)

TEXACO'S USE OF CONSIGNMENT BY REGION 1971-1975[1]

YEAR	*1971*	*1972*	*1973*	*1974*	*1975*
REGION					
PRAIRIES					
(1) Number of outlets on consignment			45	33	63
(2) % of outlets on consignment			6	4	8
(3) Volume on consignment			1,249	686	4,118
(4) % Volume on consignment			1	1	4
(5) Average length of time on consignment			208	122	305
(6) Total Subsidy payment			106	59	340
(7) Subsidy payment in $ per gallon			.085	.086	.083
BRITISH COLUMBIA					
(1) Number of outlets on consignment				16	38
(2) % of outlets on consignment				3	9
(3) Volume on consignment				511	1,837
(4) % Volume on consignment				1	3
(5) Average length of time on consignment				32	274
(6) Total Subsidy payment				46	172
(7) Subsidy payment in $ per gallon				.09	.094

1. The data supplied by Texaco was extrapolated from a 10% sample of their stations in each region.

TABLE 11

TEXACO'S USE OF ALLOWANCES IN SELECTED METROPOLITAN CENTRES 1971-1975[1]

YEAR	*1971*	*1972*	*1973*	*1974*	*1975*
CITIES					
MONCTON					
(1) Number of outlets on allowance		16	12	10	19
(2) % of outlets on allowance		37	26	22	42
(3) Volume on allowance		377	263	100	921
(4) % Volume on allowance		7	5	2	17
(5) Average length of time on allowance		10	9	2	17
(6) Total Subsidy payment		.027	.034	.02	.018
(7) Subsidy payment in $ per gallon					
MONTREAL					
(1) Number of outlets on allowance		184		136	141
(2) % of outlets on allowance		58		43	43
(3) Volume on allowance		43,796		26,612	50,179
(4) % Volume on allowance		52		30	50
(5) Average length of time on allowance					
(6) Total Subsidy payment		1,396		108	656
(7) Subsidy payment in $ per gallon		.032		.004	.013
OTTAWA					
(1) Number of outlets on allowance	36	37		32	40
(2) % of outlets on allowance	92	95		80	(a)93
(3) Volume on allowance	1,476	2,243		687	1,461
(4) % Volume on allowance	16	22		5	12
(5) Average length of time on allowance					
(6) Total Subsidy payment	18	106		13	33
(7) Subsidy payment in $ per gallon	.012	.047		.019	.023

TABLE 11 (cont.)

TEXACO'S USE OF ALLOWANCES IN SELECTED METROPOLITAN CENTRES 1971-1975[1]

YEAR	*1971*	*1972*	*1973*	*1974*	*1975*
CITIES					
TORONTO					
(1) Number of outlets on allowance	6	73	3	175	196
(2) % of outlets on allowance	3	36	1	(a)83	(a)87
(3) Volume on allowance	46	2,949	62	5,370	10,234
(4) % Volume on allowance	0	5	0	8	14
(5) Average length of time on allowance					
(6) Total Subsidy payment	2	128	2	123	302
(7) Subsidy payment in $ per gallon	.043	.043	.032	.023	.030
WINNIPEG					
(1) Number of outlets on allowance				51	46
(2) % of outlets on allowance				(a)84	75
(3) Volume on allowance				1,575	2,295
(4) % Volume on allowance				11	15
(5) Average length of time on allowance					
(6) Total Subsidy payment				44	45
(7) Subsidy payment in $ per gallon				.028	.020
REGINA					
(1) Number of outlets on allowance				11	9
(2) % of outlets on allowance				65	53
(3) Volume on allowance				92	716
(4) % Volume on allowance				2	15
(5) Average length of time on allowance					
(6) Total Subsidy payment				2	15
(7) Subsidy payment in $ per gallon				.022	.021

TABLE 11 (conc.)

TEXACO'S USE OF ALLOWANCE IN SELECTED METROPOLITAN CENTRES 1971-1975[1]

YEAR	*1969*	*1970*	*1971*	*1972*	*1973*	*1974*	*1975*
CITIES							
CALGARY							
(1) Number of outlets on allowance						5	11
(2) % of outlets on allowance						9	20
(3) Volume on allowance						312	339
(4) % Volume on allowance						2	2
(5) Average length of time on allowance							
(6) Total Subsidy payment						12	10
(7) Subsidy payment in $ per gallon						.038	.029
EDMONTON							
(1) Number of outlets on allowance							11
(2) % of outlets on allowance							22
(3) Volume of allowance							234
(4) % Volume on allowance							2
(5) Average length of time on allowance							
(6) Total Subsidy payment							2
(7) Subsidy payment in $ per gallon							.009
VANCOUVER							
(1) Number of outlets on allowance							46
(2) % of outlets on allowance							52
(3) Volume on allowance							987
(4) % Volume on allowance							5
(5) Average length of time on allowance							
(6) Total Subsidy payment							20
(7) Subsidy payment in $ per gallon							.020

1. The data supplied by Texaco was extrapolated from a 20% sample of their stations in each city.

TABLE 12

TEXACO'S USE OF CONSIGNMENT IN SELECTED METROPOLITAN CENTRES 1971-1975[1]

YEAR	*1971*	*1972*	*1973*	*1974*	*1975*
CITIES					
HALIFAX					
(1) Number of outlets on consignment				4	11
(2) % of outlets on consignment				11	31
(3) Volume on consignment				88	169
(4) % Volume on consignment				1	2
(5) Average length of time on consignment				60	120
(6) Total Subsidy payment				8	15
(7) Subsidy payment in $ per gallon				.091	.089
MONCTON					
(1) Number of outlets on consignment			12	13	11
(2) % of outlets on consignment			26	29	24
(3) Volume on consignment			210	550	350
(4) % Volume on consignment			4	11	6
(5) Average length of time on consignment			120	270	365
(6) Total Subsidy payment			18	51	27
(7) Subsidy payment in $ per gallon			.086	.093	.077
MONTREAL					
(1) Number of outlets on consignment	187	187	193		47
(2) % of outlets on consignment	60	59	62		14
(3) Volume on consignment	40,411	235	32,449		19,022
(4) % Volume on consignment	50	0	34		19
(5) Average length of time on consignment	365	17	240		245
(6) Total Subsidy payment	966	7	823		242
(7) Subsidy payment in $ per gallon	.024	.030	.025		.013

TABLE 12 (cont.)

TEXACO'S USE OF CONSIGNMENT IN SELECTED METROPOLITAN CENTRES 1971-1975[1]

YEAR	*1971*	*1972*	*1973*	*1974*	*1975*
CITIES					
OTTAWA					
(1) Number of outlets on consignment			37		12
(2) % of outlets on consignment			95		(a)28
(3) Volume on consignment			1,673		344
(4) % Volume on consignment			15		3
(5) Average length of time on consignment			243		240
(6) Total Subsidy payment			139		23
(7) Subsidy payment in $ per gallon			.083		.067
TORONTO					
(1) Number of outlets on consignment	32	19	104	47	56
(2) % of outlets on consignment	16	9	51	(a)23	(a)25
(3) Volume on consignment	1,811	77	6,723	1,701	2,609
(4) % Volume on consignment	3	0	11	3	4
(5) Average length of time on consignment	216	30	228	122	182
(6) Total Subsidy payment	127	5	485	129	197
(7) Subsidy payment in $ per gallon	.07	.065	.072	.076	.076
WINNIPEG					
(1) Number of outlets on consignment			13	13	12
(2) % of outlets on consignment			21	(a)21	20
(3) Volume on consignment			342	339	589
(4) % Volume on consignment			3	2	4
(5) Average length of time on consignment			259	153	274
(6) Total Subsidy payment			32	30	42
(7) Subsidy payment in $ per gallon			.094	.088	.071

TABLE 12 (cont.)

TEXACO'S USE OF CONSIGNMENT IN SELECTED METROPOLITAN CENTRES 1971-1975[1]

YEAR	*1971*	*1972*	*1973*	*1974*	*1975*
CITIES					
REGINA					
(1) Number of outlets on consignment			3		5
(2) % of outlets on consignment			18		29
(3) Volume on consignment			523		301
(4) % Volume on consignment			13		6
(5) Average length of time on consignment			244		213
(6) Total Subsidy payment			46		23
(7) Subsidy payment in $ per gallon			.088		.076
CALGARY					
(1) Number of outlets on consignment			1	1	14
(2) % of outlets on consignment			2	2	25
(3) Volume on consignment			171	214	2,258
(4) % Volume on consignment			1	2	12
(5) Average length of time on consignment			350	152	296
(6) Total Subsidy payment			14	17	195
(7) Subsidy payment in $ per gallon			.082	.079	.086
EDMONTON					
(1) Number of outlets on consignment					15
(2) % of outlets on consignment					31
(3) Volume on consignment					279
(4) % Volume on consignment					2
(5) Average length of time on consignment					183
(6) Total Subsidy payment					26
(7) Subsidy payment in $ per gallon					.093

TABLE 12 (conc.)

TEXACO'S USE OF CONSIGNMENT IN SELECTED METROPOLITAN CENTRES 1971-1975[1]

YEAR	*1971*	*1972*	*1973*	*1974*	*1975*
CITIES					
VANCOUVER					
(1) Number of outlets on consignment				15	22
(2) % of outlets on consignment				16	25
(3) Volume on consignment				481	1,630
(4) % Volume on consignment				3	8
(5) Average length of time on consignment				45	285
(6) Total Subsidy payment				44	146
(7) Subsidy payment in $ per gallon				.091	.090

1. The data supplid by Texaco was extrapolated from a 20% sample of stations in each city.

II The Use of Gasoline Price Support Programmes By Imperial Oil 1972-1977

The following three Tables show on a combined basis the distribution and intensity to which Imperial Oil used consignment and temporary allowances to support its dealer network over the period 1972 to 1977. This information is based upon data submitted by Imperial Oil pursuant to an order for a return of information under section 9 of the Combines Investigation Act.

These Tables contain the following information: (a) TABLE 13—Imperial's Use of Support by Region 1975-1977

For five regions — Atlantic, Quebec, Ontario, Prairies and Pacific — this Table shows:

(1) The volume of gasoline sold on support in gallons.

(2) The total amount of the support payment in dollars.

(3) The value of the support payment in cents per gallon.

(4) The total volume of gasoline in gallons sold by stations which received support.

(b) TABLE 14—Imperial's Use of Support in Selected Metropolitan Areas 1975-1977

For five metropolitan areas — Halifax, Montreal, Ottawa-Hull, Toronto and Vancouver — this Table (which was compiled from price-zone data) shows:

(1) The volume of gasoline sold on support in gallons.

(3) The total cost of the support payment in dollars.

(3) The value of the support payment in cents per gallon.

(c) TABLE 15—Imperial's Use of Support in Montreal, Ottawa and Toronto 1972-1976

The data in this Table is based upon a sample of dealer operated stations that were on consignment and/or allowances at some time during the period. The Table shows:

(1) The volume of gasoline sold on support in gallons.

(2) The total amount of the support payment in dollars.

(3) The value of the support payment in cents per gallon.

(4) The average retail selling price while on support in cents per gallon.

(5) The average length of time on support in days per year.

TABLE 13

IMPERIAL'S USE OF SUPPORT BY REGION 1975-1977

Year	*1975*	*1976*	*1977*
Region			
Atlantic			
(1) Volume sold on support	11,695,620	65,964,000	39,647,900
(2) Total support payment ($)	204,998	937,300	695,300
(3) Support payment in ¢ per gallon[1]	1.75	1.42	1.75
(4) Total volume sold by stations having used support			
Quebec			
(1) Volume sold on support	83,940,077	116,294,490	154,917,127
(2) Total support payment ($)	2,196,581	5,052,909	6,969,265
(3) Support payment in ¢ per gallon		4.34	4.49
(4) Total volume sold by stations having used support		117,654,718	160,843,213
Ontario			
(1) Volume sold on support	181,225,375	228,811,774	315,887,322
(2) Total support payment ($)	5,402,156	12,530,789	19,708,980
(3) Support payment in ¢ per gallon	2.98	5.47	6.23
(4) Total volume sold by stations having used support	198,864,744	229,321,715	316,767,806
Prairies			
(1) Volume sold on support	16,578,718	77,742,723	125,687,442
(2) Total support payment ($)	289,520	2,270,483	3,769,157
(3) Support payment in ¢ per gallon	1.74	2.92	2.99
(4) Total volume sold by stations having used support	24,916,716	81,248,283	129,066,502
Pacific			
(1) Volume sold on support	39,352,000	63,242,000	70,415,000
(2) Total support payment ($)	1,183,600	2,104,000	2,755,500
(3) Support payment in ¢ per gallon	3.00	3.32	3.91
(4) Total volume sold by stations having used support	140,945,000	139,769,000	147,037,000

1. Support payment in ¢ per gallon is a straight average for the Atlantic and Pacific regions.

TABLE 14

IMPERIAL'S USE OF SUPPORT IN SELECTED METROPOLITAN AREAS 1975-1977

Year	*1975*	*1976*	*1977*
Cities			
Halifax			
(1) Volume sold on support	1,816,200	2,988,000	3,266,500
(2) Total cost of support ($)	13,543	29,300	35,400
(3) Support payment in ¢ per gallon	1.0[2]	1.0[2]	1.1
Montreal			
(1) Volume sold on support	46,825,161[1]	71,978,988	90,833,311
(2) Total cost of support ($)	1,152,319[1]	2,877,866	4,056,665
(3) Support payment in ¢ per gallon	2.46[1]	3.99	4.46
Ottawa-Hull			
(1) Volume sold on support	9,849,871	11,397,315	14,561,799
(2) Total cost of support ($)	244,526	610,757	877,695
(3) Support payment in ¢ per gallon	2.48	5.36	6.02
Toronto			
(1) Volume sold on support	80,447,117	104,960,162	131,836,524
(2) Total cost of support ($)	2,079,731	5,080,241	7,171,635
(3) Support payment in ¢ per gallon	2.58	4.84	5.43
Vancouver			
(1) Volume sold on support	5,116,300		
(2) Total cost of support ($)	109,800		
(3) Support payment in ¢ per gallon			

1. Only includes January to November, 1975 as no data for December, 1975 was submitted.

2. Cost of support in ¢ per gallon are weighted averages for all centres except Halifax.

TABLE 15

IMPERIAL'S USE OF SUPPORT IN MONTREAL, OTTAWA AND TORONTO 1972-1976[1]

YEAR	*1972*	*1973*	*1974*	*1975*	*1976*
MONTREAL					
(1) Volume sold on support	13,623,924	6,714,788	1,564,475	6,219,520	15,743,671
(2) Total support payment	428,584	298,714	117,908	490,401	1,216,253
(3) Support payment in ¢ per gallon	—	—	7.5	7.9	7.7
(4) Average retail price while on support	51.6	52.4	65.2	75.3	81.7
(5) Average length of time on support	303	150	102	305	301
OTTAWA					
(1) Volume sold on support	1,294,329	1,773,170	1,152,787	2,098,880	2,143,828
(2) Total support payment	90,963	134,200	84,402	162,030	165,570
(3) Support payment in ¢ per gallon	7.0	7.6	7.3	7.7	7.7
(4) Average retail price while on support	47.8	53.6	64.4	70.5	81.5
(5) Average length of time on support	205	296	117	295	352
TORONTO					
(1) Volume sold on support	124,198	2,045,690	3,017,802	10,672,890	115,743,671
(2) Total support payment	8,504	154,791	236,941	848,813	1,216,253
(3) Support payment in ¢ per gallon	6.9	7.6	7.9	7.9	7.7
(4) Average retail price while on support	48.0	53.9	63.7	72.1	81.7
(5) Average length of time on support	81	259	134	301	301

1. All of the data in Table 15 is based upon samples of dealer operated stations in Montreal, Ottawa and Toronto that were on consignment and/or allowances at some point during the years 1972 to 1976. The sample in Montreal was made up of 48 stations, in Ottawa 7 stations and in Toronto 42 stations.

APPENDIX B

SUNY'S — AN EXAMPLE OF RETAIL PRICE CONTROL

SUNY'S — AN EXAMPLE OF RETAIL PRICE CONTROL

1. *Introduction*

In the late nineteen seventies a new gasoline marketing concept was introduced into Canada when Suny's International Inc., a large private brand independent, entered into a consignment arrangement under the name of its principal shareholder, J.E. Robillard Ltd., with Imperial Oil Limited. Historically, independents purchased their gasoline requirements from the refiners on an arm's-length wholesale basis and then competed with the refiners' own gasoline marketing networks in the retail market. However, in the case of this new arrangement, Imperial assured gasoline supply to Suny's and Suny's acted as a commission agent for Imperial. Moreover, Imperial retained the authority to control the retail pricing policy at each of Suny's outlets in Ontario and Quebec.[1] This resulted in Imperial being able to expand its influence in the retail market without incurring the capital expense of purchasing an independent.

Information obtained during a formal inquiry under the Combines Investigation Act into the new arrangement indicates that Suny's was controlled by Imperial's Marketing Department in a manner complementary to Imperial's second brand network. The disciplinary effect of second brand networks on the independent sector has been previously described. Their purpose, which was ultimately achieved, was to permit the majors to raise the price level of gasoline in specific markets and sub-markets.

While this Appendix focuses on the Imperial-Suny's relationship, it is noteworthy that Imperial attempted to enter into similar consignment arrangements with other independents. Within the past two years the Director of Investigation and Research has been informed that at least three other private brand gasoline marketers in eastern Canada — Top Value Gas Marts[1]; Buy-Rite Gasoline[2]; and Perrette Dairy Limited[3]—were offered Suny's-type supply contracts. That is Imperial offered them product supply but only under a consignment arrangement which allowed it to set the retail price. The Director has also been informed that of these three firms, only Top Value accepted Imperial's offer.

2. *The Imperial Oil-Suny's Consignment Agreement*

Suny's International Inc. was founded in the late nineteen seventies by Jack E. Robillard, majority shareholder, president and chief executive officer. On March 1st, 1977 Suny's and Imperial entered into a five year Motor Fuels

---

1. In March 1977, when the consignment agreement commenced, Suny's operated 26 outlets in Ontario and 11 in Quebec.

Agency Agreement (Suny's, Documents # 656-76). Parts of this agreement were amended on October 19, 1978 (Suny's, Documents # 605-15, # 631-5, # 757-96).

Under the terms of the original agreement, Imperial undertook to supply Suny's gasoline requirements in Ontario and Quebec while Suny's agreed to act as a consignment agent for Imperial. Imperial owned the gasoline, set Suny's retail prices, and guaranteed Suny's an 8¢ per gallon commission regardless of the pump price. Suny's would sell gasoline for Imperial and remit the proceeds from the sale to Imperial, less the commission stipulated in the agreement. Section 1 of the agreement establishes this agency arrangement:

> "Imperial hereby appoints Suny's an Agent of Imperial and Suny's hereby agrees to act as an Agent for Imperial for the sale of Imperial's motor fuels on the premises."
>
> (Suny's, Documents # 656-7, March 1, 1977)

That such a consignment arrangement existed may be ascertained from two additional sources. Invoices made out by Imperial's Marketing Department refer to deliveries of gasoline to Suny's outlets and the terms of sale on each of these invoices are clearly marked "ON CONSIGNMENT PER AGREEMENT."[4] Also an Imperial Oil executive has testified before the Restrictive Trade Practices Commission that Suny's was, in fact, on consignment.[5]

Significantly, Imperial's Marketing Department, and not the Wholesale Department, was responsible for the Suny's business. Traditionally Imperial's Wholesale Department has been responsible for all sales to independent resellers. In the case of Suny's, however, Imperial's marketing officials negotiated the consignment contract and consulted with Suny's on a daily basis thereafter.[6] At the Perrette hearings before the Restrictive Trade Practices Commission in the fall of 1980, an Imperial executive indicated that Suny's sales were treated as part of Imperial's branded service station sales rather than as part of its sales to resellers.[7]

The major conditions embodied in the 1977 Motor Fuels Agency Agreement were:

1. The agreement covered a five year period commencing March 1, 1977. (Suny's, Document # 668)
2. Suny's was to maintain the image of an independent gasoline marketer. (Suny's, Document # 667)
3. Imperial retained ownership of all gasolines until such time as they were sold to the consumer. (Suny's, Document # 657, clause 2(a)) Periodically Imperial carried out inventory audits of Suny's stations. (Suny's, Hearings)[8]
4. Imperial controlled Suny's retail prices. (Suny's, Document # 660)
5. The retail prices stipulated by Imperial were governed by the following considerations:

(i) It was Imperial's intention to have Suny's network grow with the market (Suny's, Document # 660); and

(ii) "Imperial undertakes to permit Suny's to be competitive with the major or private brand competition for similar type offerings in the trading area, where that competition is judged by Imperial, (and after consultation with Suny's), to be a significant competitor as evidenced by that competitor's growth in the market and where that competitor does not employ the use of sub-normal retail pricing." (Suny's, Document # 660). Mr. Robillard took this clause to mean that Suny's would match the lowest price in any market area (Suny's, Hearings).[9]

6. Suny's was guaranteed a minimum commission of 8¢ per gallon sold, irrespective of the retail price. The agreement also allowed for a "supplementary" commission to be paid under specific circumstances. (Suny's, Documents # 657-659) Oral evidence presented by Mr. Robillard revealed that Suny's never received more than the minimum 8¢/gallon commission during the March 1977 to October 1978 period (Suny's, Hearings).[10]

7. Suny's was to deduct its total commission from the amount to be remitted to Imperial (Suny's, Document # 661).

By this agreement, Imperial Oil was given the authority to control Suny's retail prices at all of the latter's Ontario and Quebec outlets. Oral evidence presented by Mr. Robillard confirmed that this was, in fact, the case:

"Q. I would like to know, Mr. Robillard, whether or not Suny's had any control, whatsoever, over its retail prices for gasoline while this particular agreement was in effect?

"A. Imperial Oil at all times stipulates our prices. They will consult with us, but they tell us the price to sell at."

(Testimony of Mr. J.E. Robillard, President, Suny's, Hearings, October 17, 1979, p. 195)

This consultation process took the form of daily telephone communications between officials at Suny's and Imperial Oil. Suny's would inform Imperial of any changes in the marketplace and Imperial would make the final decision as to whether a price change was required. (Suny's, Hearings)[11]

Eventually, Suny's objected to Imperial's retail pricing policy, believing it to be contrary to the terms of the written agreement. Suny's was concerned that it was not always being priced competitively in every market and, in particular, resented Imperial's "market tests" whereby Imperial would, from time to time, raise Suny's prices to match the major oil companies (Suny's, Documents # 75-98, # 100-101).[12] This point was brought out at hearings:

"Q. In this letter, Mr. Robillard, which is serial 75, you refer to Imperial's pricing policies, and I take it you took strong objection to those policies?

A. Yes.

Q. Could you just describe that situation as to what you took objection to?

A. Well, Imperial Oil would, you know, the original intent of this, the agreement and the reason we signed an extended agreement with Imperial Oil, was that we understood we were going to be competitive in the market. Like, if there is an unbranded at a certain price, we match him, and at not [sic] time do we ever have to match a major oil company in price, because they have got too many advantages going for them, and you know an independent just can't compete, and at times they were asking us to match the mailers [sic] [majors] and they would price us that way, and nothing we could do about it, they controlled the price. So I wrote them this letter saying that the letter and intent of the agreement was not being upheld."

(Testimony of Mr. J.E. Robillard, President, Suny's, Hearings, October 17, 1979, p. 199)

Discontentment with Imperial's pricing policy resulted in discussions regarding an alternative contractual arrangement (Suny's, Documents # 57-59, # 63-70, #72-74) and eventually to the Amended Motor Fuels Agency Agreement of October 19, 1978 which altered clauses 3 and 4 of the original agreement. The intent of the amendments was to grant Suny's some authority to establish the retail price of gasoline on behalf of Imperial.

The original clause dealing with Suny's commission per gallon, was deleted and replaced by a new clause (Suny's, Documents # 607-608) stipulating that Suny's would no longer receive a fixed commission, but one which varied directly with the retail selling price. Moreover, under the amended clause 4 (Suny's, Documents # 608-609), the selling price was to be set by Suny's above a "minimum retail price" stipulated by Imperial Oil, while Imperial maintained control of the price below the "minimum retail price." Schedule A, attached to the amended agreement sets out Suny's retail prices and associated commissions as well as the "minimum retail price" for each Suny's outlet.[13]

Oral evidence presented by Mr. Robillard indicates that, despite these amendments, Imperial continued to control Suny's retail price both above and below the "minimum retail price" (Suny's, Hearings).[14] Suny's still required Imperial's permission to make any price changes. Price advice forms were sent to Imperial daily. If Suny's proposed to change its price, it always put the reason for the change on the back of these forms. If Imperial agreed to the change, it would return the price advice form indicating its approval:

"Imperial Oil authorizes all price moves and that's why — like if we make a price move, we will inform Imperial Oil and get their authorization. They will send us one of these [price advice forms] back by return mail with the authorization signed. . . .they have to authorize every price move."

(Testimony of Mr. J.E. Robillard, President, Suny's, Hearings, October 17, 1979, p. 253)

Thus, while the amended agreement was designed to give Suny's more control over retail pricing at its outlets, Mr. Robillard's testimony shows that in

practice Suny's continued to require Imperial's authorization for any price changes. Suny's acceptance of this procedure may have stemmed from the fact that Imperial could terminate the amended agreement "for any reason" and revive the terms of the original agreement whereby Suny's would have no influence over pricing (Suny's, Document # 609).

3. *The "Predatory Danger Level"*

In the negotiations leading up to the amended agreement of October 19, 1978, Imperial outlined a proposal which essentially formed the basis for the changes made to the original agreement (Suny's, Document # 57). Imperial suggested that Suny's set the retail price "above the predatory danger level" and Imperial set the price "below the predatory danger level." Testimony by Suny's officials reveals that the "predatory danger level" corresponded to the "minimum retail price level" defined in clause 4 of the amended agreement. According to that clause, Suny's was "expressly forbidden" to sell gasoline below the minimum retail price "except at such prices as Imperial shall from time to time stipulate" (Suny's, Documents # 608-609).

One Suny's executive commented directly on the meaning of the phrase "predatory danger level." It was his understanding that Imperial Oil defined the term to represent the price level below which an independent gasoline marketer could not operate profitably. At or below the "predatory danger level" Suny's received a guaranteed commission of between 5¢ and 6.2¢ per gallon. He further noted that 5¢ to 6¢ is the minimum margin an independent could earn in order to "stay healthy":

"Q. I would like to just show you serials #57 to #59, which will be the last documents I will show you, sir. Have you ever seen these before?

A. Yes, I have.

Q. Who would have produced these documents?

A. All I can tell you, they came from Imperial, but who actually sat down and produced them, I don't really know.

Q. Right. Would they have been generated as a result of a meeting?

A. I am sure they were.

Q. In the very, — or the last three lines on serial #57, we have above floor price, Imperial and Suny's share the margin.

A. Right.

Q. Is this the type of arrangement that you eventually arrived at in October of 1978?

A. We are on a 60/40 share with them, yes.

Q. The next line says, "Suny's sets the price above predatory danger level."

A. Mm hmm.

Q. Do you know what that would mean?

A. I would have to say that's where the split comes in on the commission schedule.

Q. Do you recall the words, "predatory danger level", ever being used at any of the meetings?

A. Yes. Yes.

Q. Who would use that term?

A. It came from Imperial Oil.

Q. Do you know what it was in relation to?

A. They felt it was a level, you know, where the margin would get down so low for an independent to operate — where they couldn't operate, you know, they would need so much to operate to stay healthy and below that level, they felt that it was a predatory price.

Q. Predatory in what sense?

A. Predatory that he couldn't make a living, he wouldn't have enough money to live on the margin.

Q. And I take it that that would hold true for the next line as well, where it says, "Imperial sets the price below the predatory danger level"?

A. Right.

Q. And what would that margin be? Do you have any idea of what it might be?

A. I would be guessing, but I would think about 5¢, — 5 or 6¢."

(Testimony of Mr. A. Martin, Vice-President, Suny's, Hearings, October 17, 1979, pp. 283-4)

It is clear from this passage that the "predatory danger level" coincides with the "split" or "gap" on the price-commission schedules accompanying the amended agreement.[15] Moreover, the price immediately above the "gap" is the "floor price" or "minimum retail price level" stipulated in the amended agreement[16] as two Suny's officials noted:

"Q. Mr. Robillard, could you tell me what the significance of the floor price is?

A. Well that's where [Imperial] wanted total control after that . . .there is no way that we could price below that without going through what we did before."

(Testimony of Mr. J.E. Robillard, President, Suny's, Hearings, October 17, 1979, p. 229)

"Q. . . . Can you tell me what the floor level means?

A. Well I think you also have our commission schedule and you will see a break in that commission schedule, and when the price was to drop below that, that was

considered the floor level there. ...Above 89.9 in this particular schedule (Document # 462)[17] ...we could adjust the price there at the station level, by notifying Imperial Oil generally. When it got below this level they are sort of, in consultation with Imperial Oil, that they would either allow or disallow us to drop the price."

(Testimony of Mr A. Martin, Vice-President, Suny's, Hearings, October 17, 1979, pp. 281-2)

The price-commission schedules, then, indicate those prices which Imperial considered to be "predatory" in the sense that at those prices independents meeting Suny's price would be operating at a loss. Suny's, meanwhile, would not be losing money at such price levels since it would receive a guaranteed commission of 5¢ to 6.2¢ per gallon; a margin which, according to Mr. Martin, is the minimum necessary for an independent to remain in business.

4. *Imperial's Pricing Strategy at Suny's Outlets*

Imperial initially desired that Suny's maintain the image of a tough, aggressive price marketer as is evident from the following Suny's document:

"When Imperial approached us in regards to a supply agreement we suggested to I.O.L. that the outlets should be branded Esso. It was decided by I.O.L. that the way to go would be to leave the Suny's locations as unbranded outlets and to fill the role of a tough and aggressive discounter and recreate the image that SUNY'S had prior to the previous owners who had lost that image and as a result were losing large amounts of money."

(Suny's, Document # 76, undated, Suny's)

Mr. Robillard understood "a tough and aggressive discounter" to mean that Suny's would always be priced at least 1¢ below any major brand full-service station or self-service station and would match any independent (Suny's, Hearings).[18] He also stated in response to a question concerning Suny's pricing philosophy that:

"A. ... our pricing philosophy when I had Suny's International Limited* before, which was very, very successful, was that if somebody went down we immediately matched them, and if the whole market was down and everybody but two or three went up, then those two or three stayed down we stayed down with them until they went.

Q. After you signed the agreement with Imperial Oil you were not able to effect that same pricing policy?

---

* Prior to owning Suny's International Inc., Mr. Robillard was a shareholder in Suny's International Limited. These companies are unrelated. (Suny's, Hearings) [19]

A. In most instances we were."

(Testimony of Mr. J.E. Robillard, President, Suny's, Hearings, October 17, 1979, p. 233)

and

"Q. Mr. Robillard, the top paragraph [of document # 76] says . . . " It was decided by I.O.L. that the way to go would be to leave the Suny's locations as unbranded outlets and to fill the role of a tough and aggressive discounter. . . . "

A. Yes.

Q. I take it that you fulfilled that role, did you not?

A. We matched independents, yes."

(Testimony of Mr. J. E. Robillard, President, Suny's, Hearings, October 17, 1979, p. 236)

Document # 76, cited above, further established that Suny's would be the last outlet in any market to raise its price and the second to move down; in addition, its pricing strategy would be coordinated with Imperial's Econo and Gain stations. The latter would lead prices up in a market and Suny's would raise its price only after all other stations had raised their prices:

"During the negotiations it was agreed that if I.O.L. at any time wanted to raise prices at their outlets they would be the first to move and then would be followed by the Gains and Econos, SUNY'S role would be to follow only after everyone else had moved up.

The pricing philosophy was that SUNY'S would be the LAST TO MOVE UP, AND THE SECOND TO MOVE DOWN — in every market."

(Document # 76, undated, Suny's)

Oral evidence, presented by competitors of Suny's in the Ontario market, confirms that the pricing strategy described in this document was put into practice (Suny's, Hearings).[20]

After Suny's was established as an aggressive price marketer, Imperial changed Suny's pricing posture. Attempts were made to use Suny's to raise prices in various markets via the "market tests" referred to earlier (See note 12). Mr Robillard testified that all of Suny's markets were subject to a "market test" at one time or other (Suny's, Hearings).[21] Imperial occasionally asked Suny's to carry out these tests three or four times a month. Generally they lasted for about two days. On Tuesday morning Imperial would instruct Suny's to raise its price by X¢ per gallon in a specific market and "if the market didn't move" Suny's would be told to readjust its price on the following Thursday afternoon (Suny's, Hearings).[22] As noted above, Suny's objected to this procedure because it was being forced to price above what it considered to be a competitive price level as defined in the March 1977 agreement.

5. *A Case Study of Suny's Pricing Policy*

Table B-1, based on documentary evidence obtained from Suny's International, illustrates the manner in which Imperial Oil utilized two Suny's outlets in the Simcoe, Ontario market to influence the retail price level of gasoline. Between October 27, 1978 and July 26, 1979 Imperial priced regular gasoline at these Suny's outlets below the "predatory danger level" on several occasions. From October 27, 1978 to the end of March 1979 Imperial raised Suny's price to 89.9¢ per gallon three times. When, after each price increase, all independents did not follow Suny's price lead, Imperial dropped Suny's price below the "predatory danger level"[1] for a period of two and one half weeks the first time, four weeks the second time, and two months the third time. Between April 1979 and July 26, 1979 Suny's was priced below the "predatory danger level"[2] twice, both times after trying to raise prices to 91.9¢ per gallon.

This pricing pattern, examined at length in the main text and exposed again here, suggests that Imperial raised Suny's price in an attempt to lead market prices up. If the independents did not follow, Imperial dropped Suny's prices to a "predatory" level. After pricing at that level for a two to three week period, it raised Suny's price again. If the market did not follow this time, Suny's price was again dropped below the "predatory" level, this time for a longer period. The pattern continued until Imperial was successful in leading market prices up.

6. *Market Stabilization in the late 1970's*

That gasoline prices have stabilized in cities where Suny's has gasoline outlets is evident from the oral evidence given at the hearings. For example, Mr. Robillard testified that Imperial's "market tests" were no longer necessary in 1979:

"Q. And are market tests still being conducted?

A. It doesn't seem to be necessary now. Everybody has gone and they just price us . . .we haven't done it for a while."

(Testimony of Mr. J.E. Robillard, President, Suny's, Hearings, October 17, 1979, p. 212)

As Appendix A (The "Squeeze" on Independent Margins) demonstrates the aggressive pricing strategies followed by the majors generally had the

1. The "predatory danger level" for regular gasoline was 86.9¢ between October 27, 1978 and March 31, 1979. (Suny's, Documents # 692, # 715)

2. Between April 1, 1978 and June 7, 1979 this price was 88.9¢. (Suny's, Document # 462) July 8, 1979 this price was raised to 92.9¢. (Suny's, Documents # 452-56)

same result as Imperial's specific manipulation of Suny's price postings in narrowing the differential between major brand and independent retail prices. For instance, in the early nineteen seventies the unbranded independents were able to price several cents below major brand service stations. By the late nineteen seventies, however, the unbrandeds were "very lucky" to be able to price one cent per gallon below the major brand self-serve stations (Suny's Hearings).[23] The effect of the narrowed differential has been a general increase in margins much akin to what had occurred in the late nineteen sixties, following the particular disciplinary strategies pursued by the majors in that decade.

NOTES TO APPENDIX B

1. Top Valu operates some 60 service stations in Eastern Ontario with the majority located in the Ottawa-Hull area. In 1979 the company took over five stations from Imperial Oil and is operating them under a Suny's-type consignment arrangement with Imperial. Four of these outlets were previously branded GAIN (two in Ottawa and two in Kingston) while the other was formerly an Imperial full-service station in Kingston. Under the consignment arrangement Top Valu controls the retail price above a specified price level and Imperial controls retail pricing below this level. Top Valu's commission varies directly with the retail price.
2. Until August 1979 Buy-Rite Co. Ltd. operated 8 retail outlets in Kingston, Ontario. At that time Buy-Rite leased 6 of these outlets to Top Valu for a five year period. In the fall of 1979 Murray E. McInerney of Imperial Oil approached the owners of Buy-Rite and offered them a consignment arrangement similar to the one Suny's accepted in March 1977. Under the terms of this arrangement Buy-Rite would receive an 8¢ per gallon commission as an agent for Imperial. The owners of Buy-Rite declined Imperial's offer.
3. In the summer of 1979 Perrette Dairy Limited operated a chain of 151 convenience stores in the Province of Quebec with 31 stores having self-serve gasoline facilities. On June 11, 1979 Mr. R.J. Sperano and Mr. Albert Wares of Imperial Oil offered Perrette a Suny's-type consignment arrangement whereby Imperial would guarantee Perrette a fixed commission per gallon and Imperial would control the retail price of gasoline. This offer was rejected by Perrette executives.
4. See, for example, Suny's documents # 797, # 799, # 810-11, # 820-2, # 831, # 840-3, # 853-5, # 866-8, # 877-9, # 890-3, # 902-7, # 919-23, # 935-40, # 951-3, # 964-8, # 980-2, # 991-2.
5. Perrette Hearings — Ottawa, Volume 15, p. 1666, September 4, 1980, Imperial Oil, Testimony of Mr. C.A. Hayles, Assistant General Manager, Marketing.
6. Mr. C.A. Hayles, Imperial's Assistant General Manager of Marketing, signed the March 1977 agreement on behalf of Imperial. Mr. Robillard stated that although he generally dealt with Mr. G. Norris, Imperial's Retail Operations Manager, he corresponded with several other people in Imperial's Marketing Department as well. (Suny's, Hearings — Toronto, pp. 190-1, p. 196, pp. 200-1, p. 206, p. 209, p. 223, Testimony of Mr. J.E. Robillard, President, Suny's International Inc., October 17, 1979).
7. Perrette Hearings — Ottawa, Volume 15, p. 1666, September 4, 1980, Imperial Oil, Testimony of Mr. C.A. Hayles, Assistant General Manager, Marketing.

8. Suny's Hearings — Toronto, pp. 240-1, October 17, 1979, Suny's, Testimony of Mr. J.E. Robillard, President, Suny's International Inc.

9. Suny's Hearings — Toronto, p. 199 and pp. 214-6, October 17, 1979 Suny's International Inc., Testimony of Mr. J.E. Robillard, President.

10. Suny's Hearings — Toronto, p. 197, October 17, 1979, Suny's, Testimony of Mr. J.E. Robillard, President.

11. Suny's Hearings — Toronto, pp. 196-7, October 17, 1979, Suny's, Testimony of Mr. J.E. Robillard, President.

12. Mr. Robillard commented on Imperial's "market tests" in hearings. (Suny's Hearings — Toronto, pp. 198-9, pp. 205-6, pp. 210-17 and p. 256, Testimony of Mr. J.E. Robillard, President, October 17, 1979).

13. The "minimum retail price level" is defined as the last price before the gap on the commission schedules and is equivalent to the "floor price." (Suny's Hearings — Toronto, p. 229, p. 249, Testimony of Mr. J.E. Robillard, President and pp. 280-1, Testimony of Mr. A. Martin, Vice-President, October 17, 1979).

14. Suny's Hearings — Toronto, p. 208, p. 226 and pp. 250-254, October 17, 1979. Suny's, Testimony of Mr. J.E. Robillard, President.

15. An example of a price-commission schedule is Suny's Document # 462. Schedule A (Suny's, Documents # 757-96) was modified on several occassions by Imperial Oil. Each time there was a change Suny's would receive a set of four price-commission schedules, one each for Sault Ste. Marie, Thunder Bay, the rest of Ontario, and Quebec. (Suny's Hearings — Toronto, p. 244 and p. 248, Testimony of Mr. J.E. Robillard, President, October 17, 1979).

16. See note 13 supra.

17. In document # 462, Mr. Martin identified 89.9¢ as the floor level price. (Suny's Hearings — Toronto, p. 282, Testimony of Mr. A. Martin, Vice-President, October 17, 1979).

18. Suny's Hearings — Toronto, p. 232, October 17, 1979 Suny's testimony of Mr. J.E. Robillard, President.

19. Suny's Hearings — Toronto, p. 186 and p. 188, October 17, 1979, Suny's, Testimony of Mr. J.E. Robillard, President.

20. Suny's Hearings — Toronto, pp. 104-6, October 15, 1979, Howden Petroleum, Testimony of Mrs. W. Dummitt, Service Station Operator.
Suny's Hearings — Toronto, pp. 136-38, October 16, 1979, Howden Petroleum, Testimony of Mr. D. Fleming, Retail Area Supervisor;
Suny's Hearings — Toronto, p. 44, October 15, 1979, Gerry Petroleum, Testimony of Mr. B. Simon, President

21. Suny's Hearings — Toronto, p. 212, p.215, October 17, 1979, Suny's, Testimony of Mr. J.E. Robillard, President.

22. Suny's Hearings — Toronto, p. 256, October 17, 1979, Suny's, Testimony of Mr. J.E. Robillard, President.

23. Suny's Hearings — Toronto, p. 235, pp. 237-238, October 17, 1979, Suny's, Testimony of Mr. J.E. Robillard, President.

TABLE B-1

RETAIL GASOLINE PRICES IN SIMCOE, ONTARIO
SELECTIVE DATES: 1977-1979
(regular gasoline, ¢/gallon)

Date	*Suny's Gas Bar Whitehorse Plaza*	*Suny's Gas Bar Queensway*	*Lowest Priced Independent Competitor*
1977			
June 22	78.9		82.9
Sept. 14	81.9	81.9	81.9
Sept. 22	81.9	81.9	81.9
Oct. 3	77.9	77.9	77.9
Oct. 10	74.9	74.9	75.9
Oct. 24	81.9	81.9	81.9
Nov. 7	79.9	79.9	79.9
1978			
Jan. 13	79.9	79.9	79.9
Jan. 23	85.9	85.9	85.9
Feb. 10	79.9	79.9	78.9
Feb. 21	78.9	78.9	79.9
Oct. 27	89.9	89.9	
Oct. 28	84.9	84.9	
Nov. 7			
Nov. 8-13	84.9	83.9	
Nov. 14	89.9	88.9	83.9
Nov. 14-15	89.9	88.9	
Nov. 16-17	88.9	87.9	
Nov. 18-20	86.9	86.9	
Nov. 21-30	83.9	83.9	
Nov. 29	83.9	83.9	83.9
Nov. 30	83.9	83.9	84.9
Dec. 1-6	83.9	83.9	
Dec. 7	84.9	84.9	84.9
Dec. 7-17	84.9	84.9	
Dec. 14	84.9	84.9	84.9
Dec. 18-26	89.9	89.9	
Dec. 21	89.9	89.9	86.9
Dec. 27	86.9	86.9	
1979			
Jan. 4	86.9	86.9	85.9
Jan. 10	86.9	86.9	85.9
Jan. 11	86.9	86.9	85.9
Jan. 18	86.9	86.9	85.9
Jan. 23-25	85.9	85.9	
Jan. 25	85.9	85.9	85.9
Feb. 1	85.9	85.9	85.9
Feb. 7	84.9	84.9	85.9
Feb. 8	84.9	84.9	85.9

TABLE B-1

Date	Suny's Gas Bar Whitehorse Plaza	Suny's Gas Bar Queensway	Lowest Priced Independent Competitor
Feb. 22	85.9	85.9	85.9
Feb. 26	85.9		85.9
March 1	85.9	85.9	85.9
March 8	85.9	85.9	85.9
March 15	85.9	85.9	85.9
March 22	85.9	85.9	85.9
March 29	85.9	85.9	85.9
April 18	87.9	87.9	87.9
May 3	87.9	87.9	87.9
May 10	87.9	87.9	87.9
May 17	91.9	90.9	89.9
May 31	87.9	86.9	86.9
May 31	81.9	85.9	79.9
June 7	88.9	87.9	86.9
June 22	91.9	90.9	86.9
June 28	89.9	89.9	86.9
July 5	89.9	89.9	86.9
July 12	97.9	96.9	89.9
July 26	95.9	95.9	94.9

SOURCES FOR TABLE B-1

Note: Numbers refer to Suny's documents

Date	*Suny's Gas Bar Daily Service Station Reports*		Price Survey Map
	Whitehorse Plaza	*Queensway*	
1977			
June 22			207
Sept. 14			208
Sept. 22			209
Oct. 3			210
Oct. 10			211
Oct. 24			212
Nov. 7			213
1978			
Jan. 13			214
Jan. 23			229
Feb. 10			205
Feb. 21			206
Oct. 27	963	1082	
Oct. 28 — Nov. 7	963, 962, 960, 959, 958, 957, 950, 949, 948, 947, 946	1081, 1080, 1079, 1078, 1077, 1076, 1075, 1074, 1069, 1068, 1067, 1066, 1065, 963	
Nov. 8-13	945, 944, 934, 933 932, 931	1064, 1054, 1053, 1052, 1051	
Nov. 14	930	1050	216
Nov. 15	929	1049	
Nov. 16-17	928, 925, 911, 918	1048, 1038	
Nov. 18-20	917, 916, 915	1037, 1036, 1035	
Nov. 21-30	914, 913, 912, 901, 900, 899, 898, 897, 896, 895	1034, 1033, 1032, 1022, 1021, 1020, 1019, 1018, 1017, 1016	
Nov. 29			217
Nov. 30			218
Dec. 1-6	1136, 1135, 1134, 1133, 1132, 1131	889, 888, 887, 886, 885, 884	
Dec. 7	1130, 1127, 1129	883, 881	220
Dec. 7-17	1130, 1127, 1129, 1121, 1120, 1119, 1118, 1117, 1116, 1115, 1110, 1109, 1108	883, 881, 876, 875, 874, 873, 872, 871, 870, 865, 864, 863	
Dec. 14			222
Dec. 18-26	1106, 1105, 1104, 1103, 1095, 1094, 1093, 1092, 1091	861, 860, 859, 858, 852, 851, 850, 849	

Date	*Suny's Gas Bar Daily Service Station Reports* Whitehorse Plaza	Queensway	*Price Survey Map*
Dec. 27	1090, 1089, 1012, 1011, 1010, 1009, 1008	847, 846, 839, 838, 837, 836, 835	
1979			
Jan. 4	1007, 1006, 1000, 999, 998, 997, 996, 995, 994, 990, 989, 988, 987, 986, 985, 984, 979, 978, 977, 976	834, 833, 830, 829, 828, 827, 826, 825, 824, 819, 818, 817, 816, 815, 814, 813, 809, 808, 807, 806	
Jan. 4	1006	833	227
Jan. 10	995	825	226
Jan. 11	994	824	228
Jan. 18	984	813	230
Jan. 23-25	975, 974, 973, 972	805, 804	231
Jan. 25	972	803	
Feb. 1			233
Feb. 7			232
Feb. 8			234
Feb. 22			235
Feb. 26			236
March 1			237
March 8			238
March 15			239
March 22			240
March 29			241
April 18			156
May 3			157
May 10			184
May 17			180
May 31			178
May 31			215
June 7			176
June 22			170
June 28			160
July 5			162
July 12			201
July 26			195

APPENDIX C

SUMMARY OF THE PERRETTE INQUIRY

SUMMARY OF THE PERRETTE INQUIRY

1. *Introduction*

The Perrette case involved an application made in October 1979 by the Director of Investigation and Research to the Restrictive Trade Practices Commission (RTPC) under section 31.2 of the Combines Investigation Act for an order that Imperial Oil Limited, Petrofina Canada Inc.and/or Irving Oil Company Limited make available supplies of gasoline to Perrette Dairy Limited. Although the Director withdrew his application in October 1980 on the grounds that the complainant was able to obtain supplies of gasoline, the evidence adduced at the RTPC hearings raises several important matters requiring consideration in the context of the Petroleum Inquiry. The information obtained in the Perrette case further illustrates that the survival of the independent gasoline retailer as a competitive factor in the Quebec gasoline retailing market is threatened.

Perrette Dairy Limited has been a convenience store operator in Quebec since 1961. From one store, Perrette has grown to a chain of 148 convenience stores of which 32 have retail gas outlets[1].

Perrette first entered into the gasoline business in 1972. As a member of convenience store associations, Perrette officials attended conferences in the United States in the early nineteen seventies and learned of the successful trend in the convenience store industry of cross merchandising gasoline. Perrette wanted to pioneer this marketing technique in Canada recognizing that the company had two fundamental advantages. First, its traditional expertise in managing a convenience store chain could be extended to provide the management necessary for the successful retailing of gasoline. Secondly, establishment of self-serve gasoline outlets could be combined with expansion plans for the convenience store chain thereby reducing initial capital costs for the gasoline outlets and spreading the outlets' operating costs over both the gasoline and the convenience store operations. These factors permitted Perrette to offer an attractive low-priced package of services to consumers, thereby generating the volume needed to make such investments profitable.[2]

It was the policy of Perrette to meet the lowest price of the competition within a given market area and still earn a profit.[3] Documentary evidence filed by Imperial at the Perrette hearings indicates that from September 1, 1978 to May 31, 1979 Perrette's prices for regular, unleaded and premium unleaded gasoline were continually several cents lower than the Esso self-serve station in the same geographical area (1½ miles radius)[4].

Self-service retailers on the whole experienced a sales volume drop in the first five months of 1979 compared with the same period in 1978. During this period Perrette's sales declined only 11.4 percent compared with a 13.6 percent decline in Esso's volume in the same geographical areas.[5] Although a

representative of Imperial gave the opinion at the hearings that "some of Perrette's sites are not what we (Imperial) would call gasoline good sites"[6] the record does not convey the impression that Perrette's site selection was inferior. An interest was expressed by Imperial in buying some of Perrette's stations.[7] In addition, Petrofina was very interested in acquiring the Repentigny property which was Perrette's most recent acquisition.[8]

In sum, Perrette's ability to meet the competition in price, to maintain its position relative to Imperial in a period of declining sales volume, and acquire sites which were of serious interest to Imperial and Petrofina indicate that Perrette was both an aggressive and efficient independent competitor.

2. *Perrette's Supply Problems*

Central to Perrette's business philosophy has been the belief that the company's profits would be higher operating as an independent buying gasoline with the freedom to set its own prices and meet the competition.[9] Perrette therefore decided to resort to the tender market to meet its supply requirements.

In June 1979, Perrette's supply difficulties became severe. Perrette attempted to negotiate supply agreements with various potential suppliers in eastern Canada. All of the suppliers approached declared themselves unable to supply gasoline to Perrette with the exception of Imperial and Petrofina.

Imperial informed Perrette that it would be in a position to furnish Perrette's gasoline requirements only on the condition that Imperial would own the product and have control over the retail price with Perrette being accorded a pre-determined profit.[10]

Similarly, Petrofina stated to Perrette that it would be possible for the former to supply the latter's annual requirements of gasoline, in whole or in part, depending upon availability of gasoline, provided that Petrofina would retain ownership of the product and determine the price at which the product would be sold to the consumer. In addition the gasoline would be sold under the "FINA" brand name.[11]

Perrette rejected both proposals as being against its policy of doing business. During the week of July 10, 1979, in an ultimate attempt to obtain product, Perrette sent a call for tender by telex to nineteen (19) Canadian producers and suppliers of gasoline operating in the eastern Canadian market; however, none of the suppliers canvassed was willing to supply Perrette.

At the Perrette hearings one of these suppliers explained that its refusal was based upon company policy. Irving stated, in regard to inquiries and tenders from independent resellers of motor gasoline, that: "We are not set up of course to handle those, to sell to these people and we have not supplied them. In the past we have refused to supply. We have refused to quote on such requests."[12]

Unlike the interval from September 1, 1978 to May 31, 1979 when Perrette's prices were continually lower than that of the competition, commencing in June 1979, Perrette's retail prices for gasoline increased dramatically as compared to the Esso self-serve station in the same geographical area.[13] Perrette was charging as much as 30¢ more for a gallon of unleaded gasoline than its Esso competitor and 26¢ more for a gallon of regular.[14]

Part of the reason for this price increase was that Perrette was forced to go outside the Province of Quebec; as far as Toronto and beyond to obtain product.[15] The high transportation costs associated with pick up and delivery, estimated to be 10¢ per gallon, Toronto to Quebec City, and 8¢ per gallon Toronto to Montreal had to be passed on to the consumer.[16]

Perrette received numerous phone calls and letters complaining of the fact that their price was no longer competitive.[17] Perrette was experiencing drastic reductions in their gasoline sales volume with more than a 50 percent decline in sales per outlet.[18]

At the time of the hearings, April 1980, Perrette indicated that they were again attempting to meet the competition in pricing even though this would result in much lower profit margins.[19] Additionally Perrette indicated that its inability to obtain supplies of gasoline slowed down its planned expansion to the point of a standstill.[20]

Perrette was eventually able to secure supply and it was for this reason that the Director withdrew his section 31.2 application from the RTPC; however the position of Perrette and other independent resellers especially in Quebec remains far from secure.

This conclusion is based upon evidence relating to Imperial's attitude towards supplying independent resellers. Imperial at the Perrette hearings revealed an internal policy which threatens the future of independent resellers such as Perrette.

3. *Evidence of Imperial Oil at the Perrette Hearings*

Imperial introduced evidence concerning its planning process, indicating that a plan forecasting supply and demand for a given year is put together in the last half of the preceeding year.[21] The plan for 1979 was based on a number of assumptions including the forecast that gasoline demand would grow 2 to 3 percent in eastern Canada with unleaded gasoline representing approximately 12 percent of total gasoline sales. It was also presumed that normal refinery operations would prevail.[22]

Unfortunately 1979 turned out to be a unique year for Imperial.[23] Not having a full year's experience with premium unleaded gasoline which was introduced in 1978, the demand in Quebec for that product exceeded Imperial's forecasts and accounted for 30 percent of total gasoline sales in Quebec.

Imperial had to alter the 'mix' of its products producing an additional 1.2 million barrels of premium unleaded gasoline.[24] Furthermore, Imperial experienced a refinery breakdown, with the overall effect that in February 1979 the assessment was made that the company was overcommitted by 2.5 million barrels of product to its eastern Canadian accounts, 500,000 barrels of which were gasoline.[25]

To deal with this situation, Imperial formulated and implemented what became known as the 'Shed Program'. According to one Imperial official, it was the first time in his fifteen year association with Imperial head office activities that he could "recall the company being in a position where it actually had to 'shed' business in order to match its demand with its supplies."[26] The 'Shed Program' did not, however, affect Imperial's customer group on a uniform basis. Rather, the program focused on those customers that called tenders for their requirements on an annual basis. The reason given for this treatment was that Imperial "concluded that it would be more equitable all around if we were to reduce our commitments in the annual tender section of the market, while maintaining full supply capability to our longer term customers."[27] Finally, according to an Imperial witness the "Shed Program" ended in the fall of 1979 as the company achieved its objective of reducing its commitments and thus Imperial made no further efforts to reduce its sales.[28]

Thus Imperial's evidence was essentially that the 'Shed Program' was a temporary device which focused on the tender market and which was implemented as a reaction measure to unique supply difficulties in eastern Canada during 1979. However, the evidence suggests there were other factors that influenced Imperial's actions.

Imperial breaks down its customer accounts into three categories — service stations; consumer and industrial; and reseller.[29] Included in the service station category are company owned and operated branded outlets, second brand outlets and independent branded dealers on consignment.[30] Within the reseller class are private brand independents (of which Perrette would be an example).[31]

During the 'unique' year of 1979 when Imperial was unable to match supply with demand in eastern Canada the company closed or lost to competition 50 service stations in Quebec resulting in a reduction of 2.9 million gallons in sales. At the same time, however, the company picked up 11 service station accounts representing 3.1 million gallons in annual sales.[32] In effect, Imperial was increasing its commitments to the service station category at a time when the 'Shed Program' was reducing supply to resellers.[33]

In effect, Imperial did not cut back supply to its Esso or second brand stations. With respect to the other service stations in the first category, such as Suny's, which bought product on consignment, discussions were entered into requesting that these consignment dealers limit their sales to something resem-

bling market growth, that being 2 to 3 percent.[34] Although the Imperial people responsible for their network of service stations were aware of the 'tight supply' situation, it was admitted that no supply shortfully occurred in the network *per se*. Realized sales to this group were 253 million gallons, falling short of the planned sales of 257 million gallons.[35] This shortfall on planned sales is hardly consistent with the implementation of a program required to scale down commitments.

Indeed the effects of the 'Shed Program' were slight on the service station category. Imperial was able to supply 'Top Valu', a lessee account or an account handled on a consignment arrangement similar to Suny's, with an extra 100,000 barrels of product at a time when the 'Shed Program' called for reducing commitments.[36]

Most troublesome to the argument that supply restrictions alone were behind the 'Shed Program' is the fact that Imperial offered to supply product to Perrette as a reseller, but only on the condition that Imperial would own the product and have control over the retail price with Perrette being accorded a pre-determined margin.[37] This offer to supply was made in 1979 precisely at the time the 'Shed Program' was in effect. The consignment offer, similar to the one in effect with Suny's which was outlined in the evidence[38] directly conflicts with Imperial's allegation that the 'Shed Program' was a reaction to insufficient supply.

Rather, the evidence suggests an alternative reason for Imperial's actions. Esso stations, second brand stations and other brands on consignment comprising the service station network were not affected in their supplies by the 'Shed Program'. Further, on condition that Perrette would join this group, Imperial was apparently willing to make supply available to it. The evidence, therefore, bears out the fact that supply could be attained for the service station category — a segment where Imperial controlled the retail price. The bulk of the cuts under the 'Shed Program' were made in the commercial/industrial and reseller categories.[39] This latter category was the one that has consistently offered price competition to Imperial's branded network. By refusing to supply a firm such as Perrette, unless Perrette relinquished its control of pricing to Imperial, Imperial was following a policy that would have served to reduce price competition in the retail sector.

The transcript of the hearings indicates that Imperial recognized one objective of the 'Shed Program' lay in the stability of environment it would create.[40]

According to Imperial the 'Shed Program' was introduced as a reactive measure to the unique year of 1979 and was terminated in the Fall of that year. Yet at the Perrette Hearings in the Fall of 1980 it was indicated that a similar strategy to the 'Shed Program' was an ongoing Imperial policy in that the company was continuing to reduce the level of sales to resellers and

commerical/industrial accounts indefinitely in the future.[41] It was stated that "the supply situation has not improved so far in 1980, so the program remains in our base plan".[42] But there was more to this program than temporary supply problems. Evidence was introduced that Imperial had written letters to a number of resellers, including Petrole Moderne, Dufresne and Paquette, informing them that the company would like to discontinue supplying them by the end of 1980.[43] According to the Imperial witness, this was not a continuation of the 'Shed Program' but rather part of a policy to reduce Imperial's commitments to the reseller category in proportion to the company's share of refining capacity.[44] Imperial, thus was implementing a longer run strategy based on market share. This interpretation of events is supported by evidence filed by Imperial indicating that since 1976, the company's sales to resellers in Quebec have been decreasing. From a high of 78 million gallons of sales to this group in 1976, only 18 million gallons of product was supplied in the first six months of 1980. Conversely, sales in Quebec to the service station group have risen continually since 1976 with only a minor reduction occurring in the first six months of 1980.[45]

NOTES TO APPENDIX C

1. Testimony of Robert Boyzos, President and Owner, Perrette Dairy Ltd., Perrette Hearings, April 23, 1980, Vol. 5, pp. 531-2.
2. *Ibid.* at pp. 601-3.
3. *Ibid.* at p. 565.
4. Exhibit R-(a)-19, Perrette Hearings, September 4, 1980.
5. Testimony of Andre A. Gagne, Business Manager, Quebec Automotive Division, Imperial Oil, Perrette Hearings, Septembr 4, 1980, Vol. 15, p. 1715.
6. *Ibid.* at p. 1726.
7. Testimony of Robert Bayzos, President and Owner, Perrette Dairy Ltd., Perrette Hearings, April 23, 1980, Vol. 5, p. 548.
8. *Ibid.* at p. 555.
9. *Ibid.* at p. 550.
10. *Ibid.* at p. 546.
11. *Ibid.* at p. 554.
12. Testimony of Tracy Cleary, Marketing Executive, Irving Oil, Perrette Hearings, September 5, 1980, Vol. 15, p. 1759.
13. Exhibit R-(a)-19, Perrette Self-Serve vs. Esso Self-Serve, Perrette Hearings, September 4, 1980.
14. *Ibid.*

15. Testimony of Robert Bayzos, President and Owner, Perrette Dairy Ltd., Perrette Hearings, April 23, 1980, Vol. 5, p. 523.
16. *Ibid*. pp. 607-8.
17. *Ibid*. p. 533.
18. *Ibid*. pp. 569-70.
19. *Ibid*. pp. 569-70.
20. *Ibid*. p. 615.
21. Testimony of Charles A. Hayles, Assistant General Manager of Marketing, Imperial Oil, Perrette Hearings, September 3, 1980, Vol. 14, pp. 1601-2.
22. *Ibid*. p. 1602.
23. *Ibid*. p. 1653.
24. *Ibid*. pp. 1602-3
25. *Ibid*. p. 1604.
26. *Ibid*. p. 1653.
27. *Ibid*. p. 1603.
28. Testimony of Charles A. Hayles, Assistant Marketing Manager, Imperial Oil, Perrette Hearings, September 4, 1980, Vol. 15, p. 1679.
29. Exhibit R-(a)-17, Perrette Hearings, September 3, 1980.
30. Testimony of Charles A. Hayles, Assistant General Manager of Marketing, Imperial Oil, Perrette Hearings, September 4, 1980, Vol. 15, pp. 1664-6.
31. *Ibid*. pp. 1677, 1689-90.
32. Exhibit R-(a)-16, Perrette Hearings, September 3, 1980.
33. Testimony of Charles A. Hayles, Assistant General Manager of Marketing, Imperial Oil, Perrette Hearings, September 4, 1980, Vol. 15, pp. 1687-9.
34. *Ibid*. pp. 1676-7.
35. Testimony of Andre A. Gagne, Business Manager, Quebec Automotive Division, Imperial Oil, Perrette Hearings, September 4, 1980, Vol. 15, p. 1751.
36. Testimony of Charles A. Hayles, Assistant General Manager of Marketing, Imperial Oil, Perrette Hearings, September 4, 1980, Vol. 15, pp. 1671, 1684.
37. Testimony of Robert Bayzos, President and Owner, Perrette Dairy Ltd., Perrette Hearings, April 23, 1980, Vol. 5, p. 546.
38. Testimony of Charles A. Hayles, Assistant General Manager of Marketing, Imperial Oil, Perrette Hearings, September 4, 1980, Vol. 15, pp. 1669-70.
39. *Ibid*. p. 1677.
40. Testimony of Charles A. Hayles, Assistant General Manager of Marketing, Imperial Oil, Perrette Hearings, September 3, 1980, Vol. 14, p. 1657.
41. *Ibid*. p. 1659.
42. *Ibid*. p. 1653.
43. Testimony of Charles A. Hayles, Assistant General Manager of Marketing, Imperial Oil, Perrette Hearings, September 4, 1980, Vol. 15, p. 1685.
44. *Ibid*. p. 1685.
45. Exhibit R-(a)-17, Perrette Hearings, September 3, 1980.

APPENDIX D

THE "SQUEEZE" ON INDEPENDENT MARGINS

THE "SQUEEZE" ON INDEPENDENT MARGINS

1. *The "Squeeze" on Independent Margins*

The marketing volume of the petroleum inquiry (Volume VI) discusses at length the desire by the major oil companies in the early 1970's, fearing a substantial threat to their dominant market position, to limit the growth rate of the more efficient independent gasoline sector. Recognizing that the height of the combined oil company retail/wholesale marketing margin would permit substantial unbranded growth if they did not adopt defensive actions, the majors developed disciplinary policies designed to "squeeze" independent margins and thereby negate the spread of price discounting in local markets across Canada. The majors recognized that in the long run they might be forced to become more efficient, or they might be able to raise wholesale prices in order to reduce the spread between the brand and the independents' pump prices; but in the short run, the only way they could counter the independents' expansion was to reduce pump prices and accept a lower rate of return. Their short run strategy was to "squeeze" the independents by dropping branded prices and increasing wholesale prices. This strategy is emphasized in the following Gulf Canada document:

> In order to limit the growth rate of the Private Brand Retailers, there are a wide variety of alternative strategies that could be employed by Gulf Canada in the short term. . . . These short term strategies generally involve either:
>
> (a) increasing the price at which Resellers can purchase product.
>
> (b) reducing the pump prices of gasoline.
>
> The objective of each of the above strategies is to reduce the combined wholesale/retail margin to the point where it will be unprofitable for Resellers to continue their rapid expansion.
>
> (Document # 71533, September 3, 1971, Gulf)

The gasoline marketing volume provides a detailed account of the multinationals' strategy and depicts the squeeze on the independents' margins up until the summer of 1973. This appendix further illustrates the nature and extent of this squeeze by presenting statistical data on the post-1973 period. Table D-1 compares average retail prices for regular gasoline at major brand and independent outlets in nine metropolitan areas in Canada. Average wholesale/retail gasoline margins at major brand and independent outlets in Ottawa, Montreal and Toronto are compared in Table D-II. Finally, Table D-III charts data on service station margins at independent outlets in Ontario based on actual retail prices rather than average retail prices.

The data underlying these tables was gathered from Energy, Mines and Resources Canada (EMR) and the *Oil Buyers' Guide*, an industry newsletter. Since 1973, EMR has been collecting average retail prices of gasoline by

facility type for large metropolitan areas across Canada and has made this information available to the Director of Investigation and Research. The *Oil Buyers' Guide* publishes refined product wholesale prices FOB Toronto and Montreal on a weekly basis. Every week it surveys all buyers and sellers in Eastern Canada to establish the latest average wholesale prices for refined products. Table D-I reproduces retail price data generated by EMR. The average service station margins in Table D-II are arrived at by subtracting average wholesale prices published in the *Oil Buyers' Guide* from the average retail prices reported in Table D-I. Table D-III presents the *Oil Buyers' Guide* perception of actual retail margins at independent outlets in Ontario given the pricing policies of the major oil companies.

2. *Empirical Evidence of Squeeze: Post-1973*

(i) *Major Brand Full-Serve Wholesale/Retail Margins*

Evidence presented in the marketing section of this inquiry establishes that the multinational major oil companies expected the independents to continue growing in the Canadian gasoline marketplace so long as the spread between the independents' wholesale price at the refinery gate and the major brand full serve retail price remained in the range that had been reached in the early nineteen seventies — i.e. 16¢-20¢ per gallon. Gulf Canada, for one, recognizing that the majors had to lower their wholesale/retail margins, identified the entry limiting spread at approximately 14¢* per gallon:

> To be effective, it will be necessary to narrow the wholesale/retail spread from around the present 16 or 17 cents per gallon margin to, say, 14 cents per gallon using Marketing's criterion as a valid figure.
>
> (Document # 71531, September 9, 1971, Gulf)

Imperial Oil, meanwhile, told the Ontario Royal Commission on Petroleum Products Pricing in 1975 that major brand self-serve and full-serve stations required the following wholesale/retail margins to cover their marketing costs and earn a profit on the indicated volumes:

Facility Type	*Annual Volume (000 gallons)*	*Wholesale[a] and Retail Marketing Cost (¢/gallon)*
Major Brand self-serve	1000	10-12
Major Brand full-serve	350-500[b]	15-18

(a) Wholesale costs include costs of delivery, sales coverage, advertising, credit and accounting. (*Ontario Royal Commission on Petroleum Products Pricing*, Hearings—Toronto, Testimony by Mr. D. M. Penrose, Manager-Petroleum Product Coordination, Imperial Oil, December 11, 1975, Volume 15, p. 2339)

(b) Gulf Canada informed the Ontario Royal Commission that an efficient major brand full-serve outlet required an annual volume of at least 400,000 gallons. (Gulf Canada, Submission to the Ontario Royal Commission on Petroleum Products Pricing: Gasoline Retailing, April, 1976, p. 15.

Source: Imperial Oil, Submisstion to the Ontario Royal Commission on Petroleum Products Pricing, December 1975, Figure 7.

Table D-II allows one to analyze the majors' success in Central Canada in meeting both the target outlined in the Gulf documents and the 'profitability' criteria set out by Imperial. Columns "NFS" and "RFS" exhibit information on average wholesale/retail margins at national and regional major brand full-serve stations in the post-1973 period in Toronto, Ottawa and Montreal. This data reveals that the majors lowered their wholesale/retail margins to the 14¢ range or below in the 1973-74 period in all three cities and generally maintained this level until mid-1977. Therefore it appears that the multinationals, in the short-run, dropped their retail prices to the level recognized by Gulf Canada as necessary for slowing the rate of growth of the unbranded sector.

If it is assumed that the majors generated Imperial's volume requirements*, Table D-II shows that major brand full-service margins in Montreal and Toronto were below 15¢ per gallon for a large part of the post-1973 period and did not consistently meet Imperial's 'profitability' criteria until 1978-79. In addition, major brand self-serves did not consistently meet Imperial's objective until 1977.

(ii) *Second Brand Wholesale/Retail Margins*

Imperial Oil told the Ontario Royal Commission in 1975 that it cost 13.2¢ per gallon to operate an average Econo outlet assuming a rate of return on capital at 10% after tax:**

(iii) *Independent Wholesale/Retail Margins*

The *Oil Buyers' Guide* of March 4, 1974 reported that a full-serve independent needed a wholesale/retail margin of 8¢ per gallon (exclusive of product transportation costs from refinery to service station) to operate. This same publication on September 30, 1974 mentioned that 7¢ per gallon (exclusive of transport costs) was required to cover operating costs. Al Martin, Vice-President of Suny's International, an Ontario independent, has testified that an independent could not survive on a margin of 5¢-6¢ per gallon or less (exclusive of transport costs).***

---

* If actual volumes were below Imperial's figures, then presumably higher wholesale/margins would be needed to cover marketing costs. This stems from the fact that economies of scale operate at the retail gasoline level.

** Imperial told the Ontario Royal Commission that refining and marketing cost of capital was actually 11% to 12% after tax. *Ontario Royal Commission on Petroleum Products Pricing* , July 1976, p. 60.

*** See gasoline marketing Appendix B.

Together these sources suggest that the independents required a 9¢-10¢ wholesale/retail margin to cover marketing costs (including a 2¢ per gallon product transportation cost within a metropolitan area).* The necessity of a margin within this range is also supported by Imperial Oil. In December 1975, Imperial told the Ontario Royal Commission that an independent selling 700,000 gallons annually required a 9¢-11¢ per gallon wholesale/retail margin to operate profitably.**

Estimates of the average margins that the independents were able to recover can be found in Table D-II. Column "IFS" charts average wholesale/retail margins at independent full-service outlets in Toronto, Montreal and Ottawa at specified points in time since 1973. In Montreal, this figure was 9¢ or below in April 1973, June 1973, July 1974, October 1974 and December 1974. In Ottawa margins were 9¢ or below in May 1973, June 1973, December 1973, August 1975 and October 1976. Toronto margins failed to rise above 9¢ between March 1973 to September 1975, in June 1976 and October 1976.

If 10¢ is taken as the average margin required by independents, then Montreal margins were at or below this figure from April 1973 through November 1975, October 1976, May 1978 and March 1980. In Ottawa, margins were 10¢ or below from March 1973 to December 1973, August 1975, October 1976, January 1977 and February 1980. Toronto margins did not rise significantly above 10¢ from March 1973 to December 1977, April 1978, January 1979, April 1979, April 1980 and August 1980.

Finally, if the upper limit to Imperial's estimate of independents' costs is used — i.e. an 11¢ per gallon wholesale/retail margin requirement-it is quite apparent that Toronto, Montreal, and Ottawa independents did not attain this objective until 1977 or after. In all three scenarios (i.e. 9¢, 10¢ and 11¢) Toronto has undergone the longest duration of margin squeeze.

While Table D-II is strongly suggestive of the squeeze on independent margins, it is important to note that the prices in Table D-I that are used to calculate the margins in Table D-II are only averages and do not capture the full extent by which the majors cut their retail prices in areas where the independents operated. The *Oil Buyers' Guide* on the other hand, occasionally reported major brand retail prices in Southern Ontario during "price wars" in the post-1973 period and these were often well below the average prices in Table D-I. Independents attempting to price competively with the majors would suffer a much greater margin squeeze than suggested in Table D-II. Table D-III presents the independents' service station margins in Ontario since 1973 as

---

* C.A. Hayles (Assistant General Manager — Marketing, Imperial Oil) reportedly told the *Globe and Mail* on April 8, 1978 that the average trucker's cost in Metro Toronto is 2¢/gallon.

** Imperial Oil, op. cit., December 1975, Figure 7.

provided by observations taken from the *Oil Buyers' Guide*. From this Table, it may be seen that those independents who attempted to match the majors in "price war" areas in order to protect market share would have suffered extremely serious erosion over most of this period since the majors priced very close to independents' costs of gasoline delivered to their service stations. If the independents had met major brand prices they would not have been able to cover their labour and capital costs; nor would they have been able to earn a return on their investment.

Econo Costs of Operation: December 1975
(regular gasoline, ¢/gallon)

Retail Marketing Margin[a]		7.0
Wholesale Marketing Margin		6.2
— Facility	5.1	
— Merchandising[b]	0.3	
— Credit/Accounting	0.2	
— Other	0.6	
Total Wholesale/Retail Margin		13.2

(a) Labour, power lights etc.
(b) Advertising, promotions etc.

Source: Imperial Oil, Submission to the Ontario Royal Commission on Petroleum Products Pricing: Retail Issues, March 1976, Figure 6; *Ontario Royal Commission on Petroleum Products Pricing*, Hearings—Toronto, Testimony of Mr. C.A. Hayles, Assistant General Manager—Marketing, Imperial Oil, March 18, 1976, Volume 33, p. 4673.

By 1978 Imperial may have been able to lower this cost figure to 11.9¢.* Hence, in evaluating the margin data in Table D-II it might be assumed that all major oil company second brands** required an 11¢-13¢ wholesale/retail margin to cover their fixed and variable operating costs at the service station.

Column "PFS" in Table D-II charts average second brand full-serve margins over the 1973 to 1980 period. Significantly, these stations did not consistently generate cost recovering margins until 1978.

---

* J.A. Armstrong, President of Imperial Oil, is reported to have told Ontario independents that by 1978 Imperial have improved its cost of operating second brands by 1.3¢ per gallon. (See attached letter from Mr. M. Hogarth, President of Pioneer Petroleums to the Honourable Alastair Gillespie, Minister of Energy, Mines and Resources Canada, June 6, 1978; and attached letter from Mr. S.W. Douglass, President of Howden Petroleum to the Honourable Alastair Gillespie, Minister of Energy, Mines and Resources Canada, May 8, 1978.)

** For example, Econo, Gain, Beaver, Regent, Pronto, and Baron.

3. *Second Brand Pricing*

Documentary evidence presented in Volume VI of the petroleum inquiry and complaints by independents* have suggested that the multinationals used their second brand outlets (eg. Gain, Econo, Beaver, Regent) as 'fighting brands' to underprice the independent sector and thereby squeeze independent margins. The price data collected by Energy, Mines and Resources Canada (reproduced in Table D-I) lends support to the contention that second brands underpriced the independents. A comparison of columns 'PFS', 'IFS', and 'PSS' and 'ISS' reveals that the average price of the majors' second brands was generally below the average price of the independents in all markets in Canada throughout the post-1973 period.

* See the attached letters from Mr. M. Hogarth and Mr. S.W. Douglass, to the Honourable Alastair Gillispie, Minister of Energy, Mines and Resources Canada.

TABLE D-I

WEIGHTED AVERAGE RETAIL PRICE OF REGULAR GASOLINE

1973-1980

(by facility type and by metropolitan area; prices include all federal and provincial taxes)

Source: Energy, Mines and Resources Canada
Petroleum Utilization Group
Price Monitoring Section

GUIDE TO TABLE D-I

Note: All retail prices represent the statistical mean.

NFS	= Full service stations owned or operated by major brands having a nationwide identity.
RFS	= Full service stations owned or operated by major brands having a regional identity
IFS	= Full service stations owned or operated by independent marketers
PFS	= Full service Private or Second Brand stations owned or operated by national and regional majors
NSS	= Self-serve stations owned or operated by major brands having a nationwide identity
RSS	= Self-serve stations owned or operated by major brands having a regional identity
ISS	= Self-serve stations owned or operated by independent marketers
PSS	= Self-serve private or second brand stations owned or operated by national and regional majors

TABLE D-I

WEIGHTED AVERAGE RETAIL PRICE OF REGULAR GASOLINE
VANCOUVER, BRITISH COLUMBIA
(¢/gallon)

DATE	*NFS*	*RFS*	*IFS*	*PFS*	*NSS*	*RSS*	*ISS*	*PSS*
March/73	51.1	50.9	48.1	47.0	47.0	47.5	—	—
September/73	54.3	54.3	51.1	50.9	50.7	50.6	—	—
January/74	54.9	54.7	51.6	51.6	52.8	53.1	43.0	—
June/74	63.3	63.1	58.5	56.6	60.2	60.3	—	—
December/74	62.3	62.2	56.6	54.3	56.9	56.1	53.0	56.0
March/75	61.8	61.7	56.2	55.8	57.1	56.7	54.7	55.7
August/75	72.7	72.7	68.0	66.4	68.6	69.1	64.6	65.5
November/75	76.7	75.1	73.2	71.4	72.2	72.6	69.8	70.5
January/76	75.7	74.8	72.6	70.6	71.6	71.7	68.0	70.0
March/76	74.6	74.3	71.9	69.1	70.8	70.8	68.4	68.3
May/76	73.8	73.6	70.8	69.4	70.0	70.0	69.2	69.0
September/76	80.7	79.8	77.1	76.3	77.7	77.7	75.6	75.0
December/76	80.0	80.0	77.7	77.1	78.6	78.6	77.0	76.3
April/77	85.9	85.3	83.0	82.3	83.3	83.4	81.3	81.3
July/77	85.3	84.9	82.3	81.1	82.0	82.2	81.0	80.7
November/77	87.8	87.8	85.1	84.5	84.6	84.8	84.0	84.0
February/78	86.8	87.0	84.3	83.5	83.5	83.8	83.0	82.7
October/79	102.1	101.4	101.9	99.1	98.8	99.3	98.6	98.7
December/79	105.3	105.2	105.6	101.1	100.8	101.6	100.7	100.7
January/80	105.9	105.3	106.0	101.0	101.0	101.4	100.9	100.7
May/80	115.5	116.4	110.0	109.6	109.1	109.6	109.1	110.5
July/80	119.1	118.2	117.7	114.1	113.7	114.1	113.7	113.7

TABLE D-I

WEIGHTED AVERAGE RETAIL PRICE OF REGULAR GASOLINE
EDMONTON, ALBERTA
(¢/gallon)

DATE	*NFS*	*RFS*	*IFS*	*PFS*	*NSS*	*RSS*	*ISS*	*PSS*
March/73	49.9	49.3	44.8	46.0	45.8	—	49.0	—
July/73	51.1	50.3	46.7	46.7	46.8	—	49.0	—
October/73	53.0	51.9	47.2	48.0	49.8	—	52.0	—
March/74	53.0	52.8	48.3	48.8	48.8	—	51.0	—
August/74	59.4	59.0	53.5	52.9	52.9	54.0	54.0	—
November/74	59.5	58.2	53.3	53.3	53.7	53.0	56.0	—
February/75	58.9	57.6	53.5	53.3	53.2	53.3	53.5	—
May/75	59.9	58.3	53.4	54.2	54.7	54.0	55.0	—
November/75	75.0	71.3	69.2	68.4	69.2	69.1	69.3	—
January/76	74.7	72.2	68.9	66.8	68.6	67.9	68.3	—
July/76	72.8	70.9	67.0	66.2	67.0	67.0	66.7	—
October/76	78.2	76.0	72.5	70.7	72.9	72.8	72.3	—
February/77	77.7	75.9	72.1	71.0	72.1	71.6	71.1	—
May/77	80.3	78.4	74.5	75.0	76.2	75.9	75.1	—
August/77	79.8	78.3	75.6	74.3	75.1	75.5	75.0	—
January/78	80.9	80.8	77.5	76.0	76.8	76.8	75.9	75.0
August/79	81.2	79.7	76.4	76.7	76.4	76.8	75.1	75.0
November/79	87.3	85.7	82.5	82.0	82.2	82.4	81.5	81.0
January/80	90.1	87.7	84.8	84.0	84.0	84.3	82.9	83.0
May/80	95.5	93.2	89.6	90.9	90.9	90.9	87.7	86.4
July/80	98.6	95.5	91.4	90.9	90.9	91.4	91.4	90.9

TABLE D-I

WEIGHTED AVERAGE RETAIL PRICE OF REGULAR GASOLINE
REGINA, SASKATCHEWAN
(¢/gallon)

DATE	*NFS*	*RFS*	*IFS*	*PFS*	*NSS*	*RSS*	*ISS*	*PSS*
June/73	51.1	50.5	50.7	48.0	48.5	–	–	–
August/73	55.8	55.0	51.5	49.0	52.0	–	–	–
November/73	55.8	54.0	53.0	49.0	51.5	–	–	–
February/74	55.9	54.4	53.1	50.0	50.7	–	–	–
June/74	58.8	57.6	55.8	50.5	57.3	–	–	–
September/74	59.3	57.2	56.2	51.5	52.8	51.0	–	–
March/75	58.8	58.2	54.8	52.0	54.1	53.5	54.5	–
June/75	58.6	57.9	54.3	52.0	53.8	53.0	54.2	–
October/75	74.4	72.5	69.7	68.0	69.6	69.0	70.0	–
January/76	74.0	71.2	69.2	67.5	68.8	68.5	68.6	–
April/76	75.1	73.2	70.9	69.0	70.6	71.0	70.0	–
July/76	76.0	73.9	71.3	70.0	71.7	72.7	71.4	–
October/76	81.3	80.6	75.8	78.0	76.7	76.5	76.7	–
February/77	81.3	79.3	76.5	75.0	76.2	76.0	76.0	–
May/77	89.0	87.5	84.0	84.0	85.0	85.0	85.0	–
August/77	88.9	87.3	84.4	85.0	85.0	85.0	85.0	–
January/78	91.5	91.3	87.8	87.0	89.0	89.0	89.0	–
March/78	95.8	95.7	93.0	89.5	94.0	94.0	94.5	–
August/79	103.1	102.0	97.8	94.0	101.0	100.2	101.0	100.0
January/80	111.0	110.4	106.7	94.0	109.0	109.0	107.7	109.0
April/80	115.0	114.1	112.3	–	113.7	113.7	113.2	113.7
July/80	119.1	118.7	115.9	–	118.2	118.2	117.7	118.2

TABLE D-I

WEIGHTED AVERAGE RETAIL PRICE OF REGULAR GASOLINE
WINNIPEG, MANITOBA
(¢/gallon)

DATE	*NFS*	*RFS*	*IFS*	*PFS*	*NSS*	*RSS*	*ISS*	*PSS*
April/73	50.7	49.4	46.6	47.0	45.5	–	43.0	–
August/73	52.4	50.5	47.3	51.2	49.2	48.0	45.5	–
November/73	53.9	52.2	49.2	50.0	51.1	51.5	47.5	–
January/74	53.8	52.1	49.2	50.0	50.5	51.5	48.2	–
June/74	63.1	61.5	58.7	57.8	58.3	58.0	57.0	–
November/74	59.2	58.1	56.2	55.5	56.2	54.8	54.0	–
January/75	59.2	56.3	56.0	56.0	56.4	55.8	54.0	–
April/75	60.9	60.0	57.7	57.0	57.9	57.3	56.2	–
June/75	73.6	72.3	70.2	70.0	69.9	70.3	69.0	–
August/75	73.3	72.0	69.9	69.5	69.8	69.9	68.4	–
February/76	78.4	76.9	74.9	71.5	74.1	74.3	74.0	–
May/76	77.5	76.8	74.6	73.0	74.4	74.5	73.4	–
July/76	77.6	76.2	74.6	73.5	74.5	74.6	74.0	–
November/76	81.7	80.2	79.4	76.7	78.8	78.4	78.4	–
February/77	81.5	80.7	79.9	N/A	80.1	79.5	78.4	77.5
July/77	85.1	83.3	81.9	80.0	82.0	81.9	80.8	79.0
October/77	85.5	84.4	83.4	79.5	82.6	83.1	82.4	79.0
March/78	90.3	88.9	87.6	89.0	88.4	87.6	88.1	88.5
September/79	105.5	103.0	103.3	103.0	103.9	104.9	103.5	103.0
January/80	109.0	107.6	107.1	106.3	107.0	107.9	106.5	106.0
April/80	113.2	110.9	110.0	109.1	109.1	110.0	109.1	109.1
July/80	117.7	114.6	114.1	113.7	113.7	114.1	113.7	113.7

N/A = data not available

TABLE D-I

WEIGHTED AVERAGE RETAIL PRICE OF REGULAR GASOLINE
TORONTO, ONTARIO
(¢/gallon)

DATE	*NFS*	*RFS*	*IFS*	*PFS*	*NSS*	*RSS*	*ISS*	*PSS*
March/73	52.1	50.7	44.3	42.6	48.3	—	—	—
July/73	53.6	53.3	48.0	47.5	48.0	51.0	—	—
October/73	57.3	56.3	51.3	50.1	52.6	52.0	54.0	—
January/74	57.6	56.9	52.2	51.3	52.3	52.0	49.0	—
June/74	67.4	66.4	61.6	60.5	62.7	61.8	62.0	—
November/74	66.1	64.9	60.9	60.1	60.7	60.8	60.6	—
March/75	66.8	65.5	61.4	61.2	62.9	62.3	60.4	—
July/75	76.3	74.8	70.2	70.3	71.4	70.9	70.1	—
September/75	76.4	73.6	69.7	69.7	70.9	70.2	70.5	68.0
February/76	81.0	79.5	74.8	73.7	75.4	75.4	74.9	73.0
June/76	79.5	78.2	73.8	72.5	74.9	74.7	74.0	71.8
October/76	82.9	81.8	77.5	76.7	78.8	78.5	77.9	76.0
January/77	82.6	82.4	78.7	77.3	79.7	79.2	81.5	80.0
May/77	87.4	86.1	82.0	80.3	83.5	82.9	78.3	77.3
October/77	90.5	89.3	84.8	83.1	86.5	85.7	84.4	81.8
December/77	88.7	87.8	84.2	82.0	84.4	83.9	83.2	81.0
February/78	87.2	86.9	83.5	80.9	82.8	82.8	81.9	79.8
April 14/78	90.8	90.4	86.3	85.7	87.6	87.5	86.6	83.6
June 10/78	91.2	91.0	86.6	84.9	88.3	88.0	86.7	85.7
Aug. 17/78	95.8	94.5	90.7	91.1	92.7	92.6	91.0	90.0
Oct. 19/78	97.0	95.8	91.2	91.1	94.2	93.8	—	—
Dec. 8/78	97.4	96.1	90.8	90.3	95.0	94.2	92.1	90.1
Jan. 28/79	97.9	97.1	91.2	90.3	95.5	95.2	92.7	90.3
April 7/79	97.7	96.8	91.3	91.0	95.0	93.9	91.9	90.4
August 6/79	101.7	100.9	97.0	96.7	98.3	98.1	97.6	96.5
October 12/79	108.5	108.1	102.9	102.5	105.6	105.6	104.4	102.1
December 4/79	111.2	110.6	105.8	104.7	107.5	107.1	105.7	104.3
April 15/80	118.2	117.7	110.9	109.6	113.7	113.2	110.9	108.6
August 19/80	121.8	120.9	113.2	112.3	114.1	114.1	113.2	111.4

TABLE D-I

WEIGHTED AVERAGE RETAIL PRICE OF REGULAR GASOLINE
OTTAWA, ONTARIO
(¢/gallon)

DATE	*NFS*	*RFS*	*IFS*	*PFS*	*NSS*	*RSS*	*ISS*	*PSS*
March/73	47.6	46.3	44.4	47.3	—	—	—	—
May/73	50.0	48.6	46.3	44.8	—	—	—	—
June/73	50.3	50.0	47.6	48.5	—	—	—	—
August/73	56.5	56.2	52.0	53.8	—	55.0	51.0	—
December/73	63.1	62.5	58.2	56.8	—	57.0	55.0	—
March/74	64.2	63.7	60.8	59.8	s59.0	59.0	61.0	—
October/74	65.8	65.6	62.5	62.3	61.8	63.0	62.0	—
August/75	76.3	76.2	71.3	70.0	71.6	71.0	73.3	—
December/75	81.0	80.6	75.7	76.0	76.5	76.0	76.8	—
February/76	80.4	80.3	75.7	75.5	76.0	75.1	75.8	—
June/76	79.0	79.7	75.4	73.0	75.6	75.1	75.8	—
October/76	82.8	83.1	79.4	77.5	79.3	79.1	79.5	—
January/77	82.3	83.2	79.3	77.0	79.0	78.5	79.3	—
May/77	86.7	86.2	83.6	83.3	83.7	83.6	84.0	—
October/77	89.7	89.8	86.5	85.3	86.5	86.8	87.0	85.5
December/77	88.9	88.7	86.3	85.0	85.7	86.2	86.3	84.2
February/78	88.2	87.7	85.9	83.7	84.9	85.1	86.0	83.8
August/79	104.0	102.5	100.3	101.3	100.3	101.1	99.0	101.0
November/79	111.2	110.7	105.9	104.5	106.4	106.7	106.5	105.3
December/79	115.4	114.8	109.9	109.9	110.3	110.0	110.0	107.3
April 24/78	90.4	91.0	88.9	86.9	87.9	87.9	86.0	87.7
July 11/78	91.3	91.3	88.9	87.0	88.9	88.9	88.0	87.0
November 7/78	97.5	96.5	93.8	92.4	94.6	94.7	96.5	94.0
January 6/79	98.5	97.7	94.7	94.3	95.7	96.2	95.3	94.0
May 8/79	101.2	99.8	97.5	96.4	97.7	97.8	96.7	95.8
August 30/79	104.0	102.5	100.3	101.3	100.3	100.1	99.0	101.0
November 4/79	111.2	110.7	105.9	104.5	106.4	106.7	106.5	105.3
December 29/79	115.4	114.8	109.9	109.8	110.3	110.0	110.0	107.0
February 29/80	116.4	113.7	111.4	111.8	110.0	110.0	109.1	109.1
May 1/80	120.5	119.6	115.0	114.6	114.1	113.7	115.0	113.7
July 17/80	123.7	123.2	117.3	115.9	118.2	117.7	116.8	113.7

TABLE D-I

WEIGHTED AVERAGE RETAIL PRICE OF REGULAR GASOLINE
MONTREAL, QUEBEC
(¢/gallon)

DATE	*NFS*	*RFS*	*IFS*	*PFS*	*NSS*	*RSS*	*ISS*	*PSS*
March/73	48.2	47.2	44.6	41.3	43.7	46.7	44.0	—
April/73	48.3	47.2	45.6	42.3	44.6	44.8	40.0	—
June/73	51.0	50.5	48.3	48.1	48.9	49.7	47.0	—
July/73	53.9	53.5	51.0	50.4	52.1	52.1	47.3	—
October/73	57.6	57.1	54.0	52.8	53.6	53.3	51.3	—
March/74	62.9	62.5	60.2	58.3	58.7	59.6	57.0	57.0
July/74	64.4	63.4	60.8	59.7	60.9	60.7	—	59.7
October/74	64.5	63.2	61.1	59.6	60.9	60.5	61.0	59.0
December/74	64.2	62.8	60.3	58.8	60.7	60.1	60.0	58.0
March/75	64.4	62.5	60.2	58.9	61.0	59.9	60.0	58.0
July/75	75.1	73.6	70.5	68.8	70.2	70.5	69.0	68.3
November/75	78.5	78.1	74.9	74.6	75.5	75.4	74.5	74.0
April/76	78.6	77.1	75.7	73.5	74.1	75.3	74.0	72.8
June/76	78.7	77.7	75.1	74.5	75.6	75.3	74.3	74.3
October/76	83.4	82.4	79.5	78.2	80.1	80.0	79.4	78.0
April/77	88.0	87.1	84.0	83.1	84.8	84.4	83.8	82.8
November 19/77	87.9	87.8	85.0	82.6	83.4	83.3	84.1	81.3
January 15/78	87.3	86.8	84.6	81.5	83.8	83.6	83.1	82.0
March 31/78	90.7	90.3	87.6	86.0	88.0	87.8	86.8	85.2
May 10/78	90.1	90.2	86.1	85.5	87.5	87.1	87.4	84.0
August 21/78	93.2	92.4	89.1	88.7	91.6	91.1	89.5	87.4
November 4/78	95.1	94.4	91.3	91.3	93.4	92.7	91.1	89.4
January 10/79	97.3	96.5	93.5	92.7	95.9	95.0	94.0	91.9
March 2/79	98.5	96.9	94.0	93.1	97.0	95.3	94.5	92.3
May 6/79	99.9	98.3	94.6	94.9	98.0	96.7	95.5	92.8
July 2/79	101.7	100.5	97.8	97.3	99.0	98.2	101.4	93.8
September 18/79	107.7	107.0	104.0	104.0	104.7	104.1	106.2	102.4
January 19/80	112.4	112.3	109.5	107.4	109.1	109.3	109.1	107.0
March 20/80	115.9	115.9	112.7	109.1	113.2	113.2	112.3	109.1
August 16/80	123.7	122.3	118.7	116.8	118.7	118.2	118.2	116.4

TABLE D-I

WEIGHTED AVERAGE RETAIL PRICE OF REGULAR GASOLINE
HALIFAX — DARTMOUTH, NOVA SCOTIA
(¢/gallon)

DATE	*NFS*	*RFS*	*IFS*	*PFS*	*NSS*	*RSS*	*ISS*	*PSS*
April/73	55.9	53.2	—	—	—	—	—	—
August/73	58.7	58.9	—	—	—	—	—	—
April/74	66.0	64.9	64.0	—	—	—	—	—
October/74	65.2	64.9	63.0	—	—	—	—	—
April/75	69.2	69.2	67.0	—	—	—	—	—
June/75	79.1	79.1	76.0	—	—	—	—	—
October/75	84.4	84.4	81.0	—	—	—	—	—
March/76	83.8	83.8	81.0	—	—	—	—	—
October/76	91.6	91.6	87.0	—	91.0	—	—	—
January/77	92.2	91.5	88.0	—	—	—	—	—
October/77	97.5	97.7	96.0	—	—	—	—	—
January/78	96.9	97.7	94.0	—	—	—	—	—
April/78	99.7	100.4	97.0	—	—	—	—	—
September/79	111.8	112.1	110.0	—	112.0	—	—	—
January/80	115.0	114.7	113.0	—	115.0	—	—	—
March/80	122.3	121.4	118.2	—	122.7	—	—	—

TABLE D-I

WEIGHTED AVERAGE RETAIL PRICE OF REGULAR GASOLINE
ST. JOHN'S, NEWFOUNDLAND
(¢/gallon)

DATE	*NFS*	*RFS*	*IFS*	*PFS*	*NSS*	*RSS*	*ISS*	*PSS*
August/73	65.5	64.7	—	—	—	—	—	—
November/73	64.2	64.7	—	—	—	—	—	—
December/73	70.2	71.4	—	71.0	—	—	—	—
June/74	74.6	75.0	—	74.0	—	—	—	—
November/74	76.3	75.6	—	75.0	72.0	—	—	—
January/75	76.4	76.2	—	75.0	72.0	72.0	—	—
June/75	78.3	77.7	—	73.0	73.8	73.0	—	—
January/76	93.7	92.8	—	—	89.7	89.0	—	—
March/76	94.1	93.5	92.0	—	90.1	90.0	—	—
July/76	94.3	94.4	89.3	—	91.2	91.0	—	—
October/76	93.2	98.1	93.7	—	95.9	96.0	—	—
January/77	99.0	100.0	93.3	—	97.0	97.0	—	—
April/77	103.4	104.0	101.0	—	100.3	101.0	—	—
October/77	106.9	107.1	102.5	—	104.1	104.0	—	—
January/78	107.9	107.5	102.5	—	105.4	104.7	—	—
April/78	111.7	111.3	108.3	—	108.1	108.3	—	—
September/79	124.3	125.1	117.5	—	118.6	118.5	—	—
December/79	128.8	130.0	126.0	—	122.6	122.0	—	—
April/80	132.7	133.2	131.8	—	124.1	124.1	—	—
August/80	140.9	141.8	138.7	—	132.2	135.5	—	—

TABLE D-II

WHOLESALE/RETAIL GASOLINE MARGINS
TORONTO, MONTREAL AND OTTAWA
1973-1980

(by facility type; regular gasoline;
retail and wholesale prices include
all federal and provincial taxes)

Sources: (1) Energy, Mines and Resources Canada,
Petroleum Utilization Group,
Price Monitoring Section.

(ii) *Oil Buyers' Guide*

GUIDE TO TABLE D-II

The Wholesale/Retail Margin is defined herein as the differential between the average wholesale price of regular leaded gasoline at the refinery gate and the average retail price of regular leaded gasoline at the service station. The cost of transporting product from the refinery to the service station is paid out of this margin. Transport costs vary with the distance from the refinery. In the tables it is assumed that all facility types in each metropolitan area purchase regular gasoline at approximately the same wholesale price.*

The retail prices used to derive the margins may be found in Table D-I. Wholesale gasoline prices are taken from the *Oil Buyers' Guide* (OBG), a weekly industry newsletter, which publishes average refined product wholesale prices FOB Toronto and Montreal. Every week the *OBG* contacts all major purchasers and suppliers of refined petroleum products in these markets to ascertain the average market wholesale price. The *OBG* has published spot prices since 1973. The publication of new contract prices was discontinued after 1973 but resumed in mid-1978.

Where a particular month is listed (e.g. March 1973) the wholesale price corresponds to the average price for that month. Where a specific data appears, the wholesale price corresponds to the average price listed in the *OBG* that week. For example, the wholesale prices FOB Toronto on August 17, 1978 are based on the August 21, 1978 publication of the *OBG*.

It should be noted that the *OBG* wholesale prices exclude provincial road taxes and do not always include federal taxes. Therefore, to establish the wholesale price of gasoline, including all federal and provincial taxes, the following formula were utilized:

---

*This is based on testimony by an Imperial Oil official that service at the retail level is the major contributor to the cost differential between major brand and independent operations. (*Ontario Royal Commission on Petroleum Products Pricing*, Hearings Testimony by Mr. D.M. Penrose, Manager—Petroleum Product Coordination, Imperial Oil, Volume 15, p. 2264)

Date	*Formula*
1973 to June 19, 1978 inclusive	*OBG* price + provincial road tax
June 20, 1978 to December 10, 1979	*OBG* price + provincial road tax + federal excise tax
December 17, 1979 to August 1980	*OBG* price + provincial road tax + federal excise tax + federal sales tax

GASOLINE TAXES: 1973-1980

(i) *Federal Excise Tax*

Date of Change	*Amount*
Introduced June 24, 1975	10¢/gallon
Changed August 25, 1978	7¢/gallon
Changed January 1, 1979	1.5¢/litre = 6.8¢/gallon

(ii) Federal Sales Tax (regular gasoline): 1979-1980

Date of Change	*Amount*
January 1, 1979 to April 21, 1980	1.1¢/litre = 5¢/gallon
April 22, 1980 to August 1980	9% of manufacturers' wholesale price

(iii) *Provincial Road Taxe*

Ontario

Date of Change	*Amount*
1973 to 1978 inclusive	19¢/gallon
January 1, 1979 to April 10, 1979	4.2¢/litre = 19.1¢/gallon
April 11, 1979 to August, 1980	4.6¢/litre = 20.9¢/gallon

Quebec

Date of Change	*Amount*
1973 to 1978 inclusive	19¢/gallon
January 1, 1979 to March 25/80	4.2¢/litre = 19.1¢/gallon
March 26, 1980	20% of average retail price in Montreal. (August 1980=4.3¢/litre = 19.5¢/gallon)

New contract Wholesale Price = Average new contract wholesale price of regular gasoline FOB Toronto and Montreal to independent marketers and stations owned or operated by national and regional major oil companies

Spot Wholesale Price = Average spot wholesale price of regular gasoline FOB Toronto and Montreal to independent marketers and stations owned or operated by national and regional major oil companies

NFS = Full service stations owned or operated by major brands having nationwide identity

RFS = Full service stations owned or operated by major brands having regional identity

IFS = Full service stations owned or operated by independent marketers

PFS = Private or second brands owned or operated by national and regional majors

NSS = Self-serve stations owned or operated by major brands having a nationwide identity

RSS = Self-serve stations owned or operated by major brands having a regional identity

ISS = Self-serve stations owned or operated by independent marketers

PSS = Private or second brand self-serve stations owned or operated by national and regional majors

TABLE D-II

WHOLESALE/RETAIL GASOLINE MARGINS
TORONTO, ONTARIO
(¢/gallon, regular gasoline)

	Average Wholesale Price		*W/R Margin*									
DATE	*NEW CONTRACT TORONTO*	*SPOT TORONTO*	*NFS*	*RFS*	*IFS C*	*IFS S*	*PFS*	*NSS*	*RSS*	*ISS C*	*ISS S*	*PSS*
March/73	35.7	37.3	16.4	15.0	8.6	7.0	6.9	12.6	—	—	—	—
July/73	41.8	42.5	11.8	11.5	6.2	5.5	5.7	6.2	9.2	—	—	—
October/73	45.9	44.5	12.8	11.8	5.4	6.8	5.6	8.1	7.5	—	9.5	—
January/74	48.5	45.0	12.6	11.9	3.7	7.2	6.3	7.3	7.0	—	4.0	—
June/74	—	53.8	13.6	12.6	—	7.8	6.7	8.9	8.0	—	8.2	—
November/74	—	52.5	13.6	12.4	—	8.4	7.6	8.2	8.3	—	8.1	—
July/75	—	61.5	14.8	13.3	—	8.7	8.8	9.9	9.4	—	8.6	—
September/75	—	61.5	14.9	12.1	—	8.2	8.2	9.4	8.7	—	10.0	6.5
February/76	—	65.3	15.7	14.2	—	9.5	8.4	10.1	10.1	—	9.6	7.7
June/76	—	66.0	14.5	12.2	—	7.8	6.5	8.9	8.7	—	8.0	5.8
October/76	—	70.5	12.4	11.3	—	7.0	6.2	8.3	8.0	—	7.4	5.5
January/77	—	69.5	13.1	12.9	—	9.2	7.8	10.2	9.7	—	12.0	10.5
May/77	—	72.0	15.4	14.1	—	10.0	8.3	11.5	10.9	—	6.3	5.3
October 6/77	—	74.7	15.8	14.6	—	10.1	8.4	11.8	11.0	—	9.7	7.1
December 3/77	—	74.0	14.7	13.8	—	10.2	8.0	10.4	9.9	—	9.2	7.0
February 8/78	—	73.0	14.2	13.9	—	10.5	7.9	9.9	9.9	—	8.9	6.8
April 14/78	—	76.3	14.5	14.1	—	10.0	9.4	11.3	11.2	—	10.3	7.3
June 10/78	—	76.0	15.2	15.0	—	10.6	8.9	12.3	12.0	—	10.7	9.7
August 17/78	76.9	77.8	18.0	16.7	13.8	12.9	14.2	15.8	15.7	14.1	13.2	13.1
December 8/78	78.8	79.3	18.6	17.3	12.0	11.5	11.5	16.2	15.4	13.3	12.8	11.3
January 28/79	80.8	81.2	17.1	16.3	10.4	10.0	9.5	14.7	14.4	11.9	11.5	9.5
April 7/79	82.0	82.2	15.7	14.8	9.3	9.1	9.0	13.0	11.9	9.9	9.7	8.4
August 6/79	85.2	86.7	16.5	15.7	11.8	10.3	11.5	13.1	12.9	12.4	10.9	11.3
October 12/79	90.0	91.5	18.5	18.1	12.9	11.4	12.5	15.6	15.6	14.4	12.9	12.1
December 4/79	92.7	94.5	18.5	17.9	13.1	11.3	12.0	15.8	14.4	13.0	11.2	11.6
April 15/80	99.2	104.2	19.0	18.5	11.7	6.7	10.4	14.5	14.0	11.7	6.7	9.4
August 19/80	102.8	104.4	19.0	18.1	10.4	8.8	9.5	11.3	11.3	10.4	8.8	8.6

C = Independent Wholesale/Retail Margin if contract wholesale price is applicable.
S = Independent Wholesale/Retail Margin if spot wholesale price is applicable.
Note: Major brand margins are computed using the lowest wholesale price.

TABLE D-II

WHOLESALE/RETAIL GASOLINE MARGINS
OTTAWA, ONTARIO
(¢/gallon, regular gasoline)

	Average Wholesale Price		*W/R Margin*										
DATE	*NEW CONTRACT MONTREAL*	*SPOT MONTREAL*	*NFS*	*RFS*	*IFS C*	*IFS S*	*PFS*	*NSS*	*RSS*	*ISS C*	*ISS S*	*PSS*
March/73	34.3	34.9	13.3	12.0	10.1	9.5	13.0	—	—	—	—	—
May/73	39.7	40.0	10.3	8.9	6.6	6.3	5.1	—	—	—	—	—
June/73	42.0	41.0	9.3	9.0	5.6	6.6	7.5	—	—	—	—	—
August/73	42.9	42.8	13.7	13.4	9.1	9.2	11.0	—	12.2	8.1	8.2	—
December/73	—	53.0	10.1	9.5	—	5.2	3.8	—	4.0	—	2.0	—
March/74	—	50.0	14.2	13.7	—	10.8	9.8	9.0	9.0	—	11.0	—
October/74	—	50.0	15.8	15.6	—	12.5	12.3	11.8	13.0	—	12.0	—
August/75	—	62.3	14.0	13.9	—	9.0	7.7	9.3	8.7	—	11.0	—
December/75	—	65.0	16.0	15.6	—	10.7	11.0	11.5	11.0	—	11.8	—
February/76	—	65.0	15.4	15.3	—	10.7	10.5	11.0	10.1	—	10.8	—
October/76	—	70.5	12.3	12.6	—	8.9	7.0	8.8	8.6	—	9.0	—
January/77	—	69.5	12.8	13.7	—	9.8	7.5	9.5	9.0	—	9.8	—
May 25/77	—	71.5	15.2	14.7	—	12.1	11.8	12.2	12.1	—	12.5	—
December 28/77	—	73.8	15.1	14.9	—	12.5	11.2	11.9	12.4	—	12.5	10.4
February 24/78	—	73.0	15.2	14.7	—	12.9	10.7	11.9	12.1	—	13.0	10.8
April 24/78	—	76.0	14.4	15.0	—	12.9	10.6	11.9	11.9	—	10.0	11.7
July 11/78	76.5	76.2	15.1	15.1	12.4	12.7	10.8	12.7	12.7	11.5	11.8	10.8
November 7/78	78.6	79.0	18.9	17.9	15.2	14.8	13.8	16.0	16.1	17.9	17.5	15.4
January 6/79	80.7	80.7	17.8	17.0	14.0	14.0	13.6	15.0	15.5	14.6	14.6	13.3
May 8/79	82.7	82.7	18.5	17.1	14.8	14.8	13.7	15.0	15.1	14.0	14.0	13.1
August 30/79	84.4	86.9	19.6	18.1	15.9	14.4	16.9	15.9	15.7	14.6	12.1	16.6
November 4/79	91.9	93.9	19.3	18.8	14.0	12.0	12.6	14.5	14.8	14.6	12.6	13.4
December 29/79	93.4	95.9	22.0	21.4	16.5	14.0	16.5	16.9	16.6	16.6	14.1	13.6
February 29/80	98.0	101.9	18.4	15.7	13.4	9.5	13.8	12.0	12.0	11.1	7.2	11.1
July 17/80	102.7	103.8	21.0	20.5	14.6	13.5	13.2	15.5	15.0	14.1	13.0	11.0

TABLE D-II

WHOLESALE/RETAIL GASOLINE MARGINS
MONTREAL, QUEBEC
(¢/gallon, regular gasoline)

DATE	Average Wholesale Price: NEW CONTRACT MONTREAL	Average Wholesale Price: SPOT MONTREAL	W/R Margin: NFS	RFS	IFS C	IFS S	PFS	NSS	RSS	ISS C	ISS S	PSS
March/73	34.3	34.9	13.9	12.9	10.3	9.7	7.0	9.4	12.4	9.7	9.1	—
April/73	—	37.5	10.8	9.7	—	8.1	4.8	7.1	7.3	—	2.5	—
June/73	42.0	41.0	10.0	9.5	6.3	7.3	7.1	7.9	8.9	5.0	6.0	—
July/73	42.0	41.0	12.9	12.5	9.0	10.0	11.4	11.1	11.1	5.3	6.3	—
October/73	44.4	44.3	13.3	12.8	9.6	9.7	8.5	9.3	9.0	6.9	7.0	—
March/74	—	50.0	12.9	12.5	—	10.2	8.3	8.7	9.6	—	7.0	7.0
July/74	—	54.3	10.1	9.1	—	6.5	5.4	6.6	6.4	—	—	5.4
October/74	—	53.3	11.2	9.9	—	7.8	6.3	7.6	7.2	—	7.7	5.7
December/74	—	51.8	12.4	11.0	—	8.5	7.0	8.9	8.3	—	8.2	6.2
July/75	—	61.0	14.1	12.6	—	9.5	7.8	9.2	9.5	—	8.0	7.3
November/75	—	65.0	13.5	13.1	—	9.9	9.6	10.5	10.4	—	9.5	9.0
April/76	—	64.3	14.3	12.8	—	11.4	9.2	9.8	11.0	—	9.7	8.5
October/76	—	70.5	12.9	11.9	—	9.0	7.7	9.6	9.5	—	8.9	7.5
April/77	—	72.3	15.7	14.8	—	11.7	10.8	12.5	12.1	—	11.5	10.5
November 19/77	—	74.3	13.6	13.5	—	10.7	8.3	9.1	9.0	—	9.8	7.0
January 15/78	—	73.5	13.8	13.3	—	11.1	8.0	10.3	10.1	—	9.6	8.5
March 31/78	—	76.3	14.4	14.0	—	11.3	9.7	11.7	11.5	—	10.5	8.9
May 10/78	—	76.3	13.8	13.9	—	9.8	9.2	11.2	10.8	—	11.1	7.7
August 21/78	77.0	77.8	16.2	15.4	12.1	11.3	11.7	14.6	14.1	12.5	11.7	10.4
November 4/78	78.6	79.0	16.5	15.8	12.7	12.3	12.7	14.8	14.1	12.5	12.1	10.8
January 10/79	81.3	81.3	16.0	15.2	12.2	12.2	11.4	14.6	13.7	12.7	12.7	10.6
March 2/79	81.5	81.5	17.0	15.4	12.5	12.5	11.6	15.5	13.8	13.0	13.0	10.8
May 6/79	82.8	82.5	17.4	15.8	11.8	12.1	12.4	15.5	14.2	12.7	13.0	10.3
July 2/79	84.3	85.5	17.4	16.2	13.5	12.3	13.0	14.7	13.9	17.1	15.9	9.5
September 18/79	87.9	90.9	19.8	19.1	16.1	13.1	16.4	16.8	16.2	18.3	15.3	14.5
January 19/80	93.4	98.9	19.0	18.9	16.1	10.6	14.0	15.7	15.9	15.7	10.2	13.6
March 20/80	98.5	102.9	17.4	17.4	14.2	9.8	10.6	14.7	14.7	13.8	9.4	10.6
August 16/80	106.8	103.7	20.0	18.6	11.9	15.0	13.1	15.0	14.5	11.4	14.5	12.7

C = Independent Wholesale/Retail Margin if contract wholesale price is applicable.
S = Independent Wholesale/Retail Margin if spot wholesale price is applicable. (weekly average)
Note: Major Brand margins are computed using the lowest wholesale price.

TABLE D-III

INDEPENDENT OPERATING MARGINS

SOUTHERN ONTARIO: 1973-1979

Source: *Oil Buyers' Guide*

GUIDE TO TABLE D-III

Table D-III is founded on the *Oil Buyers' Guide* appreciation of independents' operating margins at the service station (exclusive of transportation costs) in "price war" areas of Ontario during the 1973 to 1979 period.

Wholesale Cost	= Independent marketers' delivered cost of regular gasoline to the service station. This cost is composed of (a) the Toronto wholesale price reported in the *Oil Buyers' Guide* during the week in question, and (b) a 2¢/gallon transportation cost from the refinery gate to the service station.
Major Brand Prices	= The lowest major brand prices of regular gasoline in "price war" areas as reported in the *Oil Buyers' Guide*.
Independents' Operating Margin	= The independent marketers' operating margin at the service station in "price war" areas assuming the independent attempts to match the lowest major brand prices.

TABLE D-III

INDEPENDENT SERVICE STATION OPERATING MARGINS
SOUTHERN ONTARIO: 1973-1979
(¢/gallon; regular gasoline)
Source: *Oil Buyers' Guide*

Date	*Wholesale Cost**	*Major Brand Prices*	*Independents' Operating Margin*
April 16/73	39-40	—	2.0-4.0
July 30/73	45	47.9-49.9	2.9-4.9
March 4/74	46	49.9-51.9	3.9-5.9
April 22/74	47	50.9-51.9	3.9-4.9
May 13/74	47	—	4.0
June 17/74	56	59.9-61.9	5.9-6.9
July 29/74	55	55.9-58.9	0.9-3.9
August 5/74	55	54.9	(0.1)
August 12/74	55	54.9	(0.1)
September 9/74	56	55.9-59.9	(0.1)-3.9
September 16/74	56	57.9-59.9	1.9-3.9
September 30/74	56	—	2.1
October 21/74	55	57.9-59.9	2.9-4.9
November 18/74	55	58.9	3.9
November 25/74	55	57.9-58.9	2.9-3.9
December 2/74	55	60.9-61.9	5.9-6.9
December 9/74	55	58.9-59.9	3.9-4.9
October 27/75	64	69.9	5.9
November 10/75	64	69.9	5.9
November 17/75	64	66.9	2.9
November 24/75	69	74.3	5.4
December 8/75	69	71.9-74.9	2.9-5.9
December 29/75	69	70.9-74.9	1.9-5.9
January 12/76	68	72.9-75.9	4.9-7.9
February 2/76	67	—	5.9-7.9
March 8/76	68	70.9-71.9	2.9-3.9
March 22/76	67	69.9	2.9
April 12/76	67	69.9	2.9
April 19/76	67	69.9	2.9
July 5/76	68	71.9	3.9
July 19/76	68	69.9-73.5	1.9-5.5
August 2/76	68	72.9-74.9	4.9-6.9
August 23/76	68	72.9-74.9	4.9-6.9
September 6/76	73	76.9-81.9	3.9-8.9
September 13/76	73	75.9-81.9	2.9-8.9
October 4/76	73	74.9-75.9	1.9-2.9
November 15/76	72	78.9-81.9	6.9-9.9
December 20/76	72	77.9-81.9	5.9-9.9
January 3/77	72	79.9-81.9	7.9-9.9
February 28/77	72	79.9-81.9	7.9-9.9
March 7/77	75	83.5-86.5	8.5-11.5
March 28/77	75	83.9	8.9
June 6/77	74	77.9-82.9	3.9-8.9

TABLE D-III

Date	*Wholesale Cost**	*Major Brand Prices*	*Independents' Operating Margin*
June 13/77	74	80.0-83.9	6.0-9.9
June 20/77	74	78.9-83.9	4.9-9.9
June 27/77	74	78.9-79.9	4.9-5.9
July 25/77	74	77.9-83.9	3.9-9.9
August 15/77	74	76.9-80+	2.9-6+
August 29/77	74	76.9-80+	2.9-6+
September 5/77	77	85.9-88.9	8.9-11.9
September 19/77	77	80.9-86.9	3.9-9.9
October 3/77	77	80.9-85.9	3.9-8.9
October 17/77	77	80.9-85.9	3.9-8.9
October 25/77	77	71.9-81.9	(5.1)-4.9
November 7/77	77	76.9-78.9	(0.1)-1.9
December 5/77	76	78.9-83.9	2.9-7.9
January 2/78	76	78.9-79.9	2.9-3.9
February 27/78	75	83.9-86.9	8.9-11.9
March 6/78	79	87.9-90.0	8.9-11.0
May 22/78	78	84.9-89.9	6.9-11.9
May 29/78	78	88.9-92.9	10.90-14.9
June 19/78	78	86.9	8.9
August 7/78	79	91.9-92.9	12.9-13.9
February 12/79	81	89.9	8.9
February 19/79	81	92.9-93.9	11.9-12.9
May 7/79	83	79.9-87.9	(3.1)-4.9
May 14/79	84	87.9	3.9
July 16/79	85	95.9-97.9	10.9-12.9
November 5/79	94	91.5-95.9	(2.5)-1.9

*Wholesale costs include a 2¢/gallon transportation cost from refinery to service station. Therefore wholesale cost represents the delivered cost of gasoline to the service station.

Copies of letters from

S.W. Douglass, President

Howden Petroleum Ltd.

and

M.E. Hogarth, President

Pioneer Petroleums

May 9th, 1978.

Hon. Alastair Gillespie
Minister of Energy, Mines & Resources,
Sir William Logan Building
580 Booth Street,
Ottawa, Ontario
K1A 0E4

Dear Sir:

Thank you very much for the copy of your letter to Mr. Murray E. Hogarth, President of the Pioneer Group of Companies.

I note with particular interest your understanding that "several majors have effected substantial efficiencies in their refining and marketing costs". There is little doubt that this is true. In fact, in a recent letter to myself (copy enclosed), the president of Imperial Oil has stated that "in the two years since we submitted material to the Isbister Commission, we have been able to reduce our marketing costs in Ontario by 1.3 cents a gallon".

In March, 1976, the Isbister Royal Commission and Petroleum Pricing published data submitted to it by Imperial Oil, clearly illustrating that the operating costs of their secondary brand outlets was:

13.2¢ PER GALLON.

If one makes allowance for Imperial's "substantial reduction in marketing costs" of 1.3 cents per gallon, their current operating cost of their secondary brand outlets appears to be:

11.9¢ PER GALLON.

One could reasonably speculate that other majors' operating costs would be consistent with that of Imperial Oil.

On April 11, 1978, the following market samples were documented:

OUTLET	*POSTED REGULAR PRICE*
GAIN (I.O.L.), BELLEVILLE	77.9¢/gal
ECONO (I.O.L.), SCARBOROUGH	82.9¢/gal
SUNY'S (I.O.L.), GALT	81.9¢/gal
GAIN (I.O.L.), STRATFORD	82.9¢/gal

Many other similar examples existed, however the above examples should serve to illustrate the point. If one applies Imperial's apparent operating cost to their Gain posting in Belleville, the following appears:

	77.9¢/gal — GAIN POSTING — April 11, 1978, Belleville, Ont.
Less	11.9¢/gal — OPERATING COST
	66.0¢/gal —
Less	1.0¢/gal — TRUCKING COST
	65.0¢/gal — APPARENT TERMINAL NETBACK

On the same date, terminal rack prices to independents, F.O.B. Kingston, Ontario, were 77.0¢–78.0¢ per gallon. Rack prices to independents were 75.0¢–76.0¢ per gallon, F.O.B. Toronto, Ontario, on the same date.

I certainly agree with your observation that several refiners have learned from the marketing strategies of the independents; and furthermore, can see little wrong in emulation of the independents' marketing approach. I do not feel, however, that the application of this approach by the majors should be allowed to occur without a parallel relationship between rack prices to independents and netbacks on the sale or transfer of gasoline to the majors' own retail networks.

Some enforcement of this relationship would most certainly lead to much more efficient distribution of gasoline and would ensure the survival of efficient independents.

Your comments in this connection would be greatly appreciated.

Yours very truly,

S.W. Douglass,
President.

SWD/mm

c.c. Mr. M.E. Hogarth

encls.

June 6, 1978.

Hon. Alastair Gillespie,
Minister of Energy, Mines & Resources,
Sir William Logan Building,
580 Booth Street,
Ottawa, Ontario. KlA 0E4

Dear Sir:

Thank you for having your top official, Mr. Digby Hunt, meet with our group of concerned Presidents representing most of the private brand companies still operating in Ontario.

We are here today to stress to you our concern about our ability as independents to survive the aggressive pricing policies that continue to be used by some Major Oil Companies and in particular Imperial Oil.

In my letter to you of January 12, 1978 I stressed that if even a minimal share of the market was to be retained by Canadian owned independents then the squeeze on their margins by the Major Oil Companies who both supply them at wholesale and compete with them at retail must be *quickly* corrected. Since January the margins in many markets have been squeezed even further and more of the smaller private brand companies and stations have gone out of business. Many more will not be able to survive the summer if some Majors (notably Imperial Oil) continue to use their second brands to undermine the traditional market position covered by the independents.

In your letter to me of April 18, 1978 you state that "several major refiners have effected substantial efficiencies in their refining and marketing costs". Imperial Oil gave evidence to the Isbister Ontario Royal Commission in March 1976 that their operating costs of their secondary brand outlets was 13.2¢ per gallon. Since then, Armstrong of Imperial has stated that they have improved these costs by 1.3¢ per gallon leaving a current cost of about 11.9¢ per gallon. Despite this cost, Imperial continues to lead retail prices down to levels where their terminal net back figure is at or below the cost of crude. In these cases they are selling well below cost and subsidizing their marketing operations from production profits. The independents cannot compete with this practice.

Imperial Oil's most recent strategy is to attempt to lead the wholesale price to independents upwards by one cent (see attached copy of letter) while at the same time aggressively lowering the retail market prices and thus squeezing the independent margins. Their plan is to obtain more controlled volume at retail through their second brands as they gradually reduce the amount of uncontrolled wholesale volume to the independents. Without some form of immediate government interference, their plan could be successful.

In your recent communication to the Major Oil Companies you stressed that the viability of the efficient independent marketer must not be impaired. We are collectively here today to impress upon this Government that this viability *has* in fact been impaired and continues to be so. Some Major Companies (notably Imperial) continue to squeeze the independents while paying lip service to requests such as yours from Government. As independent business people we prefer to act for ourselves and not ask government for services. However, in this case our last resource is Government help in preventing some Major Companies from taking the cavalier approach that seems to say they are bigger than the Canadian Government and will do as they please.

It is now apparent that the industry itself cannot find a solution to our problem. We therefore ask that the Government immediately act by issuing guidelines relating to pricing behaviour in the supplier/independent re-seller relationship and by examining immediately whether or not some of the pricing practices of some Majors (notably Imperial) is in fact predatory and whether or not the Government should initiate anti-Combines charges.

Yours sincerely,

PIONEER PETROLEUMS

M.E. Hogarth
President.

MEH:pm